THE FIFTH SCHEDULE

VOLUME 1

Dr. B. D. SHARMA

06717

About the Book:

The Fifth Schedule of our Constitution presents a near ideal frame for one of the most difficult tasks in the history of humankind - telescoping the process of change spanning thousands of years into a few decades and enabling the people to develop according to their own genius. It concerns eight million tribal people comprising more than three hundred communities, small and big, at different stages from hunters and gatherers, shifting cultivators, traditional farmers, on to those caught in the whirl of socalled modern development.

The book presents a historical perspective and the grand vision of our founding fathers. It critically analyases the great confusion which has prevailed ever since as also the stark unconcern of the rulers and callous dereliction of duty on their part. Even Constitutional bodies have faltered in their assigned tasks. It has caused great irreparable damage to many a people. Some weakest groups are on the verge of extinction.

This disasterous phase may prove to be an interlude for many a people and the potential of the fifth Schedule frame may be realised as the people are asserting their rights. Some positive responses from the State may also help such as creation of space for the community and its tradition specifically in the Constitution and its affirmation and illucidation by the Supreme Court.

The relevant constitutional provisions, international conventions, the historic judgement of the Supreme Court and the lists of the Scheduled Tribes and Scheduled Areas are also reproduced for handy reference.The first authoriative book on the Fifth Schedule. It is a must for administrators. activists, scholars and political workers who are concerned about the future of our country particularly the fate of disadvantaged groups caught at some nitches like the Scheduled Tribes.

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The Fifth Schedule

Part-I

The Fifth Schedule

Vol-1

The Fifth Schedule

VOL.-1

Dr. B.D. Sharma

Sahyog Pustak Kuteer Trust
NEW DELHI-110013

PUBLISHED BY :

SAHYOG PUSTAK KUTEER (TRUST)
(also contact address of the author)

11-A, Nangli Rajapur,
Nizamuddin East,
New Delhi- 110 013
Phone : 011- 4643997

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PRINTED IN INDIA BY :

J.K. Offset Printers,
Jama Masjid, Delhi- 110 006

DESIGNED & COMPOSED BY:

VM Designs & Prints, NOIDA
Ph.: 4582940, 4586377

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धरती भगवान ने बनाई
हम भगवान के बेटे,
सरकार
बीच में कहाँ से आई?

— उन्नीसवीं सदी में छोटा नागपुर के तानाभगतों का अंग्रेजी सरकार द्वारा जमीन पर अधिकार जताने और उस पर लगान लगाने के अधिकार को खुली नैतिक चुनौती और उसके खिलाफ बगावत का ऐलान

God Created the Earth
We are Children of God
Pray, Wherefrom has
the Government Appeared ?

— Open moral challenge and revolt in the nineteenth century by Tana Bhagats of Chotanagpur against the British Government. Proclaiming its right over land and imposition of land revenue.

* * *

How can you buy or sell the sky, the warmth of the land? The idea is strange to us. If we do not own the freshness of the air and sparkle of the water, how can you buy them? Every part of this earth is sacred to my people. Every shining fine needle, every shore, every mist in the dark woods, every clearing and humming insect is holy to the memory and experience of my people...

But if we sell you our own land, you must remember that the air is precious to us, that the air shares the spirit with all the life it supports. The wind that gave our grand father his first breath also receives his last sigh. And if we sell you our land, you must keep it apart and sacred, as a place where even the White Man can go to taste the wind that is sweetened by the meadow's flowers...

From the letter of
the Chief of Seattle to
the President of United States
in 1854

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Preface

India of our dreams! A Sovereign, Socialist, Secular, Democratic, Republic, We the People of India, Resolved to Establish on November 26, 1949. It was on this day, half a century back, that we gave unto ourselves a Charter in the form of a Constitution for realising the cherished dream. The broken national landscape with ubiquitous ditches and cliffs had to be converted into a level playing ground with tools assembled in the Charter. The disadvantaged of all description - social, educational, economic, those bonded by force, money or usage, or enslaved by custom and tradition had to be liberated, enabled and empowered so as to breath the fresh air of an egalitarian vicinage. A new spirit of the great ideals of the Constitution, Justice, Liberty, Equality and Fraternity would inform the national life through out the country, the deep recesses of the rugged hills and dense forests included.

Here in these recesses was a totally different world of the simple people, unaware about any thing beyond their idyllic locale, envy of even the most romantic visionary, the lands of primitive communes, nearest to the ideal set by the nation to achieve. So, herein also was an extremely delicate and difficult task too, *viz.*, conveying the message of the new world comprising those elements which had improved the quality of man's life, mellowing the ravages of struggle for sheer physical survival during the early days, and had created conditions for optimal development of human potential. Yet, it was necessary, nay crucial that the finer elements and communitarian values of their life were retained and enriched, about which they are not even aware for they come to them as naturally as the air to all living beings, until the tragedy of its denial befalls them. They could be bartered for glitter inconsequential and the loss may be irretrievable.

A fine balance, therefore, was built in the 'Charter of the Nation'. There are safeguards against the possible pitfalls. There are simple provisions and specific directions too for facilitating onward journey and removing all possible obstacles. There was no formula. What we had was a flexible enabling frame for the challenging journey. It was designed to meet all possible situations, in which a group or even a sub-group, large or small or even minuscule, may happen to be located. The biggest challenge was likely from the variety of forces, likely to be engendered by the formidable task of national transformation in all spheres of life, social, economic, political , within a time frame of just a decade or so. How long after

all the people could be expected to wait after centuries of humiliation, degradation and even destitution? The 'other world' was moving ahead at a fast pace. Is pace was becoming faster by the hour. A long long way to catch up with!

The objective was clear. But the political scenario was uncertain with a queer mix of all sorts of elements, radicals, moderates and reactionaries. There were, however, no differences about development as a common goal. It was believed by all that a minimal economic base was a precondition for building up other finer elements of human existence, equality included. The routes for achieving that goal however could be quite different. Nevertheless so far as the tribal people were concerned, they were at a different stage of development, not 'backward' as generally believed. Some of them were at pre-agricultural stage like hunting and gathering, shifting cultivators or pastorales. The early forms of agriculture were also in vogue in many areas. The first task in their case, therefore, was to telescope within a few decades the entire panorama of historical development and attain a stage of economy where the rest of the country was already there for centuries.

The objective was simple, but the task was rather difficult, yet clear. Protection was to be at the top of the agenda for the simple people at a time when they were being induced and encouraged to move out of their time-tested traditional way of life. The pace of change had to be so simulated that it remained within the limits of their comprehension and always amenable to their discretion. Peace and good government were accepted as pre-requisites both for protection and advancement. All these aspects basically concerned the governance of these areas. It was, therefore, desirable, nay, vital to keep the same outside the arena of political ideologies. The latter would become relevant only after a minimal threshold was reached.

The tribal affairs were, therefore, accepted as a national task above party considerations. They were to be the exclusive concern of executive government which alone, even otherwise was competent to handle the affairs because of the knowledge, understanding and experience of its members gained during the British rule following the 'exclusion principle'. Even otherwise, the administration established by the British, including the fabled 'steel frame', was taken as it was, with minor changes which were rather cosmetic, as the main instrument of economic and even social transformation in the era of planning which soon followed

The Fifth Schedule provided a near ideal frame for this purpose. It is reinforced by specific provisions in the Constitution such as Articles 164 (1), 224, 275,338,339 and the exceptions made even in the Fundamental

Rights contained in Articles 15,16 and 19. This frame would obviously share the benefit of the overall national thrust succinctly expressed in the Preamble with the twin provisions of the Fundamental Rights and the Directive Principles of State Policy serving the firm foundation and the moving spirit of the national adventure.

The executive headed by the Governors in the States and the President at the Centre was assigned the task of operationalising these provisions. The Governor under the Fifth Schedule is the sole Legislature for the Scheduled Areas. He has been vested with the authority even to direct that any law of the State and even the Centre shall not apply to the Scheduled Areas or shall apply with such exceptions and modifications as he may deem necessary in his discretion. The President can give directions to the States as to the drawing up and execution of schemes for the welfare of the Scheduled Tribes in the State. The financial needs for the execution of various welfare and developmental programmes as also for raising the level of administration of the Scheduled Areas to that of the rest of the State, have been fully provided for under the First Proviso to Article 275 (1) of the Constitution and made a Charge on the Consolidated Fund of India. A Constitutional Office of the Commissioner for Scheduled Castes and Scheduled Tribes was created for keeping a watch, *inter alia,* on the tribal scene and ensure that the Constitutional safeguards and commitments were honoured by all concerned.

Misplaced Confidence

The national leadership was confident about the executive imbibing the new spirit and accomplishing the national task. Moreover, they were fully reassured about the superiority of the formal structure, with the change of guards no doubt at the Centre and in the States with peoples representatives in command, over the informal participative processes of the traditional system governed by the local customs and tradition. It was in this frame of reference that the general laws of the land, both old and new, were extended to the Scheduled Areas as they were, without even looking at what was being extended, let alone its suitability and even propriety. Even in the Sixth Schedule areas of the North-East, where the people were spared this trauma of Scheduled Areas, the new Constitutional schema under the Sixth Schedule envisaged a totally centralised System at the district level with Autonomous District Councils, comprising formally elected people's representatives in full command. These measures proved to be the biggest blunder for which the tribal people have paid rather a heavy price.

A number of factors contributed to this sad episode. The ruling elite did not really appreciate the significance of the difference in the two

situations, that is, the tribal areas and the general areas, notwithstanding the eulogisation of the former. The tribal society was nearest to the Constitutional objectives and values whereas others were expected to launch, if at all, a '*long march*' for achieving those objectives and imbibe those values, beset with all sorts of hazards and uncertainties. It should, therefore, have been clear that the same institutional frame will not be suitable for both situations.' Moreover, the partcipative system of the traditional communities was based on consensus. It was superior to, nay incomparable with, the proposed representative system based on the game of numbers. In fact, the latter militates against the finer elements and basic values of tribal life, ironically in the name of so called democracy and modernity. And the confidence in the Executive headed by the Governor in our country is so overwhelming that all laws are extended automatically leaving it to the Governor to work out the necessary details in his discretion and make the necessary correctives.

There were three crucial aspects which were taken for granted in this regard, *viz:*, (i) the empathy, objectivity and understanding of the administrative personnel responsible for managing tribal affairs, (ii) the ability, commitment and courage of the officials to report on the situation realistically and to ensure that it reaches the decision-making levels, and (iii) the sensitivity, fortitude and wisdom of the Governor himself at least in his handling of the tribal affairs.

These unstated premises, however, proved to be illusory. The administration failed to rise to the occasion even in its real forte, that is, preparing a workable plan of action and a realistic reporting system with procedures, clear and well-defined, in pursuance of the various Constitutional provisions. The scope of the key clauses of the Fifth Scheduled such as 'peace and good government', 'administration of the Scheduled Areas', 'regulation of allotment and transfer of land' has not been defined, nay, has not even been attempted in the half-century after their adoption. The result is that there in no system of a real 'Report' being sent by the Governor to the President to this day which is central to the discharge of the Constitutional responsibility by the Executive on either side, at the Centre or in the States.

The obligation to prepare an annual report implies an obligation to have:(i) a realistic assessment of the tribal situation in all its facets, concerning all sections thereof, large or small; (ii) the nature of administrative actions for protection and advancement of the tribal people and their efficacy; (iii) the problems which may arise in achieving the stipulated targets and the Constitutional objectives; and (iv) points for action and for intervention in terms of changes in the policies, programmes, institutions, laws and rules made there under.

The Reports of the Governor, therefore, remained routine compilation of departmental activities which practically served no purpose. Even a systematic review of the level of administration of the Scheduled Areas in terms of a specific provision under the First Proviso to Article 275 (1) of the Constitution has not been attempted to this day. Unconcern to the extent of callousness can be the only description of this state.

Similar has been the story on the planning front even during the heydays of planning when the ruling elite stood by the efficacy of planning and was proud of its achievements. The delicate and intricate issue of transformation and the quantum 'stage jump' which was implicit in the case of tribal people were simply equated with a few schemes of infrastructure building and the so called economic development. Even these schemes in their turn got equated with financial provision and expenditure. There was a serious default even in the limited space of financial allocations for tribal affairs. The central outlays from the very beginning largely supplanted the State's own effort. It took more then two decade to give a reasonable frame within the overall planning process of the county for the tribal areas and translate the pre-planning era Constitutional provision into a formal scheme under the national plan for financing the same. It basically envisaged meeting the requirements of tribal affairs in full as a Charge on the Consolidated Fund of India without even going to the Parliament. It was also clear that the central provisions were by way of supplementation of the State's efforts to the extent necessary in relation to the schemes which may be agreed to between the Centre and the concerned State. This frame came to be known as 'tribal sub-plan' whose scope was larger than that of concerned plans notwithstanding the nomenclature of sub-plan. As per the Constitutional mandate nothing concerning tribal affairs could be left out by executive including protective measures on any technical ground whatsoever.

The spirit of tribal sub-plans, however, did not sustain for long. The ritual and the routine prevailed to the virtual exclusion of its moving spirit. The irony is that the Central Ministries became oblivious about their responsibilities even before they came to grips with the problems and perceptions of the tribal people in the areas of their respective responsibilities. The nodal ministry has forgotten its role to stand by the tribal people unto the last with full authority of the Constitution and ensure provision in full for the meeting all requirements with supplementation to the extent necessary with no ifs and buts.

The performance can be said to be an anti-climax. The half century after adoption of the Constitution has not even witnessed a regular review of the most sensitive, vital and humane issue of tribal affairs at the highest

level in the Union Government or the National Development Council. The saddest part is that the government has formally stated so in the Action Taken report submitted' [1] to the Parliament which did not evince even a simple reference from any of the honourable members, let alone calling attention and such like. The *babus,* largely unconcerned and unaware about the field situation, are keeping up with the rituals of the Constitution.

The lapse has not been confined to the mere routine. The substantive issues concerning the nature of change in the unique idyllic setting of the tribal people have remained largely unattended. The poetry of the *panchasheel* of Pandit Nehru did find ubiquitous expression in official papers. It has also drawn applause in conferences and public gatherings. Yet it has remained buried in official files with no action. Not even an attempt has been made to see what each of the formulations therein would really imply in terms of the structure of administration, the processes of planning or even the most elementary aspects of a community's life, self governance and command over resources. The crucial first decade of planning which stipulated the momentous take off, rolled off even without a whimper.

This phase did have to its credit an ambitious programme of Special Multipurpose Tribal Projects in selected areas. They were followed by a moderated version known as Tribal Development Blocks. These programmes, however, lost their momentum even before a third of the tribal population was covered there under. Even the Constitutional Commission under the stewardship of U.N. Dhebar which was, mandated to review the tribal situation after the 'momentous first decade' could not rise above the national obsession about the ill-defined development even in the idyllic hills and dales of a happy people who had remained mostly unconcerned about what was portrayed as development.

The Eclipse

This Constitutional Commission found the scheme of the Fifth Schedule of the Constitution *'not really necessary'* even before the preliminaries about its operationalisation had been worked out. Moreover, the Commission failed to realise the gravity of adverse forces which were likely to be engendered in the process of fast development. They considered even the risk of opening up of the areas worthwhile as, according to them, the possible benefits would outweigh the possible loss of ground and the needed protective measures could be reasonably taken under the general laws of the land. The Fifth Schedule was forgotten thereafter as the ritual of so-called development came to occupy the centre of the stage. Not many people knew which tribal areas are scheduled in our country until a special act concerning the *panchayats* for these areas was passed in 1996, which we will discuss later.

The inevitable followed. The simple tribal was totally defenceless in areas caught in the whirl of modern development - industrial and mining complexes, big irrigation and hydel projects, tourist resorts, defence establishments. Disorganisation, displacement and destitution became their destiny with no real possibility of worthwhile correctives. The State, which had the responsibility for providing protection, itself became an interested party. It has fortified itself by the myths and mystique of modern development and many a specious premise such as 'some one has to pay the price of development'. At best, mere performance of certain rituals was deemed as fulfilment of the Constitutional obligation. In many tribal areas, therefore, discontent could not be contained; confrontation became the order of the day. Open rebellions are not unknown. Ruthless repression followed, which by no stretch of imagination could meet the situation.

It was in a bid to meet the situation created by growing tribal unrest that the new strategy of tribal sub-plans was formulated in early seventies and the Fifth Scheduled was 'rediscovered.' Protection and building up the inner strength of the community were kept at the top in the new agenda so that there was no need for artificial props in due course. Development came next with a clear stipulation that the traditional universalistic aspects were to precede the modern particularistic. While the tribal sub-plans were to provide the needed thrust on the economic front, the Fifth Schedule was to take care of protection, administration and self-realisation in a comprehensive frame of peace and good government for the Scheduled Areas.

The Executive again faltered. The sub-plans started with a bang. There was torrential flow of funds under the new provisions. There was also associated influx of men and institutions on an unprecedented scale. Yet the highest priority items of protection, administration and self-realisation remained untouched. The Fifth Schedule was no doubt amended in 1976 to enable the concerned governments to take necessary measures for making tribal sub-plan areas coterminous with the Scheduled Areas so that the economic and the socio-administrative processes could move in unison. An exercise was also started in right earnest soon thereafter. It is a sad commentary on our system that the thrust was lost as the flow of funds under tribal sub-plans got routinised without any reference to what was happening on the socio-administrative side.

That exercise remains half-done without any exception even to this day in all the eight States having Scheduled Areas. It has not even begun in West Bengal, Kerala, Karnataka, and Tamil Nadu which have tribal sub-plans but no Scheduled Areas. In fact, now even the fact that there was a

commitment to this effect in the Parliament itself, implict in the statement of objectives presented with the draft bill for amending the Fifth Schedule as stated above and that effective use of the provisions of the Fifth Schedule was accepted as a precondition for success on the economic front, have been forgotten. Not a single Regulation has been made in pursuance of the new strategy. The result, therefore, is just the opposite. *The tribal sub-plans have proved to be the most potent instrument of colonial consolidation in the tribal areas. Unrest continues to grow, confrontation has been mounting and open rebellion is the order of the day in many areas.*

The lack of appreciation of the basic difference between the tribal scene and other areas, referred to earlier, had other serious implications as well. The laws enacted during the Imperial regime as also the entire institutional structure established then were basically founded on the imperialist premise *'Trust the System, Not the People.'* Therefore, the System even by non-action, largely supported the forces of iniquity because it meant favouring *status quo*. This was callous negation of its new role which was supposed to curb them and help and even promote forces of equity for establishing an egalitarian social order. The progressive forces, spontaneous or otherwise, proved to be too weak before the adverse forces. The latter acquired the tacit support of the System even as rulers congratulated themselves about long strides made by the country which were mostly notional. It was basically this iniquitous System which had been superimposed on the tribal System ironically in the name of democracy, socialism, equality, equity and progress. That the tribal areas are victims of a man-made tragedy and that they are witnessing the undoing of a near ideal System, have not even been realised by the ruling elite. It is obsessed with the so called development. What is unpardonable, it is disdainful about all that pertains to the traditional and the simple unsophisticated people.

People's Assertion

The human spirit has always revolted against the unnatural, sordid and inhuman state of loss of freedom and subservience. Beside other forms of reactions of the tribal people referred to earlier, the revolt took a new form in the late eighties in some tribal tracts, particularly Bastar. The people started asserting their right to manage their affairs according to their tradition and customs. It found symbolic expression in a simple slogan '*Mava Nate Mava Raj*' or '*Hamare Gaon Mein Hamara Raj*' (Our Village Our Rule). This assertion and their declaration for a change were claimed as the natural right of a community, inviolable and absolute.

This universal truth, in the case of the tribal people, was also in consonance with the specific provisions of the Fifth Schedule and the

avowed declarations of the State about tribal affairs. Moreover, it was also in furtherance of the basic tenets of the Constitution as exemplified in the Directive Principles of State Policy for the entire country. Therefore, any law which negated this natural right or even compromised the same in any way was declared by the people as unacceptable to them. This revolt-like assertion has been made with a difference. *The defiance in this case is against a set of laws which themselves are violative of the Constitution.* There is full confidence and also a sense of responsibility because the people are conscious of the fact that they are doing what the executive had failed to do. That such laws have continued after independence and were superimposed on the tribal tracts without any consideration whatsoever was nothing short of dereliction of duty on the part of the Executive, including the highest in the State and the Union.

The record of the Executive in this regard, as noted earlier, was dismal. No one including the Governor and the President could claim, even by way of inference, to have even appreciated the grave responsibility cast on them by the Constitution. Even the Tribes Advisory Councils comprising tribal people's own representatives remained rather unconcerned. It is time that they themselves assess their performance which cannot be creditworthy or commendable by any standards. The performance of the Parliament as reflected in the debates on the Annual Reports presented by the Commissioner (Now National Commission) under Article 338 of the Constitution cannot be said to behove that august body, to say the least. About one such occasion the description below succinctly gives the quintessence : [2]

> *'The invaluable six hours in twelve years assigned for considering the state of one fifth of the entire population of our county, the most vulnerable and also the most innocent, was used up in homilies, in anecdotal references, in condemning and at times in praising the Government depending on the allegiance of the hon'able member. Every one was happy as the Hon'ble Minister assured them to look into certain matters, carefully avoiding even a trace of a real or even a formal 'assurance' to the House on any issue of policy, programme or even in relation to violations of the Constitution and human rights. The crucial issues evaporated in the thin air of that Great Hall.*
>
> *'The BABU was the real winner at the end of the day. The files were folded in the Official Gallery with a sense of great satisfaction. The Minister had made not a single, not even one embarrassing assurance. His conduct was impeccable. The* ***babus*** *could resume their business as usual with nothing to worry till the next*

bout. The concerned people, the Scheduled Castes and the Scheduled Tribes, who had been betrayed at every step earlier, were being betrayed in the Great House again, and again on every single count, word by word, by the trustees of their cause. Here we have a real life drama which can be best described as 'THE BETRAYAL OF BETRAYED'

This was the year 1994. The Hon'ble Minister had eulogised the long step taken by the nation with the amendment of the Constitution in respect of local self-government and adding a new Part on Panchayats therein. He and even the Hon'ble members, however, were oblivious of the fact that the same House had found it necessary to exclude the Scheduled. Areas from the purview of that Part. This had to be done in response to the gathering storm under the banner of *Mava Nate Mava Raj*. It was clear that the representative system of Panchayats at the village level will remain alien to the traditional ethos and may be rejected by them in the changing context. There is no doubt that the authority of the traditional system in many areas had got severely eroded. Yet, the community is still quite strong and functioning effectively even in that state of steep decline. The Panchayats, therefore, by themselves could not deliver the goods even in the limited arena of their responsibility of so called development, much less when their very legitimacy was being questioned by the people.

It was clear to the rulers that in the areas possessed by the new assertion, the continuing confrontation would not relent unless the forgotten agenda of building a new System on the firm foundation of the traditional system was brought to the centre of the stage. Accordingly it was decided not to extend the provisions of Part IX concerning Panchayats and Part IX A concerning Municipalities as such to the Scheduled Areas and consider making necessary exceptions and modification before extending them. This was done in 1996 following the recommendations of Bhuria Committee through the Provision of Panchayats (Extension to the Scheduled Areas) Act (in brief the *Extension Act*). *It became the first law in the history of Indian legislation after independence which was enacted, for adaptation of a legal provision before applying the same to the Scheduled Areas.*

Unfolding of the Potential

The Extension Act envisages the community at the village level in the form of Gram Sabha as the basic building block of the new system. Moreover, this Act merely puts on record the fact that the Gram Sabha is *'competent'* to manage the affairs of the community in accordance with its customs and tradition. This provision is unique and stands out in contrast to the general scheme of delegation and devolution of powers, in-

cluding that for Panchayats under Articles 40 and 243G, by the State, which wields the ultimate authority in all matters concerning a citizen's life.

The acceptance of the *'competence'* of community in the form of Gram Sabha is acknowledgement of the fact that self-management is a natural right of the community, which is *swayambhu* (self-created) and precedes the State. The fact that the provision is enshrined in the Constitution, presumes that there will be a harmonious construct between the practices of the self-governing community and the Constitutional tenets and values. Any law which is inconsistent with the new frame, to the extent of its inconsistency, is violative of the Constitution and becomes inoperative automatically.

Here is a frame with potential for initiating a process for building up of the inner strength of the community, the element which has eluded the tribal people all these years notwithstanding the *panchasheel* of Nehru and its formal incorporation in the tribal sub-plan strategy. In the vital arena of protection, the Extension Act reverses the role-perception of the State. Instead of the State continuing to play the role of the *Guardian*, which it has miserably failed to perform, it is the community, again in the form of Gram Sabha, which is to assume that pivotal role. The Gram Sabha has to ensure that land is not alienated and wrongfully alienated lands are restored to the real claimants. Even the State, which is still holding on to the principle of *Eminent Domain*, cannot acquire land without 'consulting' the Gram Sabha, which virtually means their 'consent'. Thus the State, in due discharge of its Constitutional responsibility of providing effective protection to the tribal people, has to assume a supportive role with the people themselves occupying the centre of the stage.

The Extension Act, thus, for the first time, has initiated a process of unfolding of the potential of the Fifth Schedule. A beginning has been made in unequivocal terms at the village level. The parameters for transformation at higher levels in the Panchayat System as also higher echelons of the State and the Union have also been set. The pattern of the Sixth Schedule has been mandated to be pursued with suitable adaptation at the district level. The Zila Parishad, the panchayat at the district level, may emerge as an institution of real self-governance in the Scheduled Areas. However, it will be so with a vital and a wholesome proviso that the Gram Sabha shall still remain at the centre in the larger frame. *The Gram Sabha is obviously the tallest amongst all formal institutions which after all comprise mere representatives of people.* All representative institutions will play a supportive and where necessary a complementary role, but never the role of a master which has been their obsession hitherto. Thus, a new relationship qualitatively different from all others will gradu-

ally evolve between the people and various institutions of the State. *These institutions in the changed context will be perceived by the people as extensions of their own being in response to the challenges of the modern world within the overall frame of a non-centralized polity.*

It is not a mere coincidence that in the Agency Areas of Andhra Pradesh, the fabled battle field of sustained revolutionary struggles of tribal people, the State has been forced to have a second look at the legal frame which was dissonant with the tradition of community's command over natural resources. Regulations have been made not only to check its erosion but also to undo the damage and to reverse the process to the extent possible. Moreover, the State had to redefine its own position in clear terms as a protector of tribal interest in contrast to the Big Brother role with authority to play about with natural resources the way it liked. A regulation was promulgated stripping the State of the assumed authority of granting leases of mineral resource to any person in its discretion. Under the new Regulation the tribals and their societies alone could be granted that privilege. The people's assertion of their command over natural resources in terms of the provisions of the Fifth Schedule has been affirmed by the Hon'ble Supreme Court in their historic judgement in *Samatha versus* the State of Andhra Pradesh which is reproduced in full in Volume II. The Gram Sabha in Agency Area have started asserting their rights and challenging of the state even in matters like leasing out collection of cashew from plantation. The local courts are affirming the people's claim. It may, however, take some time before the State Andhra Pradesh imbibes that spirit and facilitates the structural transformation implicit therein.

The dilemma before the ruling elite is simple and clear. It was succinctly expressed in a Conference held at Bhopal in Madhya Pradesh after day long deliberations on the Extension Act by a hon'ble minister of the State; [3]

> *'" I want to know one thing if you can clarify. Once this law (Extension Act) has been implemented what will those of us do who have gathered in this hall including cabinet ministers, MLAs and senior civil servants?"*

The moral of story is quite clear. Their respective roles will wane and disappear like the grin of Cheshire cat in the participative democracy which the law is designed to establish. It is as it should be in a real democracy. We are confident that the logic of people's power which is finding expression in the Scheduled Areas 'is bound to transgress the bounds of the Scheduled Areas and inform the entire nation...India will become a true federation of lakhs of village republics, setting an example for the rest of the world to emulate.' [4]

Vol. 1

Part-I

Chapter 1
A General Review before Independence

Background

The advent of British rule in India marks a qualitative change in the life of the people - both positive and negative. A new window was thrown open for the ideas and the experiences of the European Continent with whom communication had been virtually snapped after the rise of Islam in the Middle East and the continued turmoil thereafter. But at the same time the State power, which arose thereafter and had to be faced by the people, was not only contrary to the great ideals of the Occident but negation of the hoary tradition of self-managing system of the people in small community-formations which are natural or *swayambhu*. The face-to-face community in the village had remained the basic unit of the people's life in India, self-governing and also self sufficient to a large extent, irrespective of the nature of political formations at the higher levels. The rise and fall of great empires did not make much difference to this unit which provided the reference frame for all affairs of the people.

The situation in the remote hilly and forest regions was almost idyllic. The community formation of the early man had continued undisturbed. The people enjoyed undisturbed command over the resources of their respective territories whose boundaries were jealously guarded by the concerned communities. The social and economic formations were simple with little space for any formal relations including money and market. The customs and traditions provided the frame of reference for self-governance in open forums of village assemblies. The higher level institutions at the group of village level served as the forum for appeal against their decisions and also resolution of inter-village disputes. More important matters could also be taken to a still higher formation of the concerned community or the tribe. That verdict would be final and binding like a law for the concerned people. The socioeconomic situation of these people has been described as 'primitive communism'.

These territories remained largely outside the pale of influence of the kings and also the emperors located in the plains. Some early political formations also emerged from within the community. In some cases, they were emulated or even borrowed from the neighbours like local kings and chieftains. Their authority was, however, notional. It was a part of the complex web of social, economic, religious and magical elements. They became a part of the traditions and the customs of the people

with no trace of exotic authority. These formations, however, remained exceptions to the rule in the general tribal ethos of self-governance.

The Insidious Invasion

The strongest challenge to the spread of the British hegemony, through subjugation of native rulers, taking over the administration of their territories and even simple annexation thereof, came as they entered the territories of the tribal people. Paharias of Rajmahal put up the toughest fight followed by Kols, Santhals, Mundas in the eastern sector. Similar encounters were faced in the South as also the West. The tribal people valiantly protected their respective territories. They did not allow the white men to set their feet. In many cases, where they had entered in the beginning, whose significance the tribal people had not realised, they were externed and even eliminated.

The tribal people never acknowledged the authority of exotic centres of power including the authority which the British established, notwithstanding the record which they had created, as per their perception as also their practice in the form of promulgations, regulations, etc. These formalities had no meaning for the tribal people. In any case they were beyond their comprehension, hence irrelevant. Such a situation still prevails for example in Andaman Island in areas inhabited by Jarawas, the Sentenelese and the Shompens. The authorities could please themselves with the fiction which they thus created. Nevertheless the formal extension of authority by the new centre of political power had its own implications.

The exotic elements had been spreading out to the remote tribal regions, as a part of the natural process in the history of mankind all through, for example, by way of small trade in some essential commodities which could catch the fancy of simple people in exchange of what in their System was 'worthless'. These elements found the new political centre a dependable ally, should they face unpredictable contingencies in the 'wild'. In their turn, those elements themselves could also serve as messengers, conduits and even agents of the political system. Thus, the 'duo' reinforced each other. They attempted to acquire command over the resources of these regions directly or through devious devices in trade and use of money. They even claimed authority through forms unknown to the tribal people and irrelevant in their context such as *zamindari, thekedari*, etc. This led to serious conflict situations in many areas. The people intermittently attempted to resolve the new conflicts by eliminating the concerned elements and even directly attacking the forces behind them, that is, the centres of political power. These assertions by the tribal people have been variously described as revolts, rebellions and such like by the chroniclers of history, because they themselves, by and large, belonged to the other side.

Here comes the real twist. It was not possible for the emerging colonial regime to formally acknowledge that their rule did not extend to these regions inhabited by the indomitable people as they had already claimed command over them and even given the same a formal legal frame. Yet, the fact was that that legal frame had no meaning for the tribal people. They would not tolerate any interference from out side. The new regime sought to formalise this situation, for their benefit, through the system of what was termed as 'non-regulation areas'. *This device was mainly addressed to their officials so that they may not treat these areas and the people living there, like other areas and other people.* The other areas were 'imperial territories' and the other people 'subject people' governed by the imperial laws. So far as the tribal people were concerned, they were happy with that change implicit in non-regulation as all irritants were removed thereby. They could go about with the affairs of their day-to-day life in what they had considered as their territory as hitherto before. A variety of arrangements were made in different parts of the country depending on the local situation and sensitivity of the people. For example, the tribal Chiefs in the Dangs in Gujrat were paid annual tributes. The traditional management System of Santhals was incorporated in the regulations of the Raj. The land tax in Khunti belt of Mundas was termed as *'chanda'* or contribution in deference to the sentiments of the people. However, the total refusal of Tana Bhagat in the adjoining region to accept the right of the rulers over land and to pay revenue was met with force and sale of their estates. Nevertheless the fact remains that what the rulers wrote in their 'books' was of no concern to the people so long as they were not bothered and disturbed.

Here was a slow process of acculturation through which the imperial authority which was repulsed in the first encounter itself and was never acknowledged by the people even later, got superimposed. The Raj, however, created new allies amongst the tribal people themselves, for example, the interpreter or *dubhashi* or even the traditional headmen whom the people trusted as their contact with the outside world. This contact with the new rulers, in course of time, became a new source of strength and authority for the headmen outside their own people. The frame of 'non-regulation' was deemed by the cunning rulers as a special form of subjugation and annexation of the territory. The irony is that the perception of the traditional leadership of the tribal people itself, in course of time, got transformed. The traditional leaders came to believe that the formal accredition of theirs by the exotic centres as representatives of the concerned people, was the formal bestowal of authority by the Raj over their people to act in accordance with their regulations. And these Regulations were in a way mere record of the fact that the administration would not interfere with the way the people were managing their affairs. *The authority was, thus, usurped insidiously by the Raj and the people were made to believe that they were under the Raj, tributes or no tributes, record or no record.*

The Forms of Exclusion

As the British proceeded to consolidate their control over the great subcontinent, both the style and the form changed continuously depending on the local situation and changing times. Most of the princely States having tribal areas were not disturbed. In their case, the traditional system continued subject, however, to the changes which were introduced by the Rulers who were obliged to adopt in their governance some definitive form or the other, and not just their will as law. Even such changes sometimes resulted in revolts such as in Bastar. They were no doubt suppressed, but not without some change in the policy and the frame which ignited the revolts.

Similarly in other areas where the Raj resolved contradictions through total exclusion to begin with, the situation changed and the position was reviewed step by step as it was able to win over some allies or even succeeded in making intrusions in their System through other devious devices and made its presence felt as a centre of power which could not be ignored. In this process, a policy of graduated exclusion, in place of total exclusion, got evolved. The degree of exclusion depended on the way the local people reacted to the presence of the exotic elements and their assertion of authority bestowed on them by the new regime. Thus, the Raj adopted a two way classification for the management of the tribal areas, namely, non-regulation and partial regulation. The first regulation was promulgated in the wake of the revolt of Paharias of Rajmahal Hills in 1796. The suppression of Kol insurrection in 1831-32 was followed by the declaration of the Chotanagpur as a non-regulated area in 1833 (Regulation XIII of 1833). The resistance of Koyas in the South similarly took the form of gurilla warfare, uprisings (1803 onwards) and armed insurrection (1862). While these revolts were mercilessly put down, changes in the system of administration also followed. A separate Act was passed next for the districts of Ganjam and Vishakhapattnam in 1839. Later, a general Scheduled Districts Act was passed in 1874 declaring the two districts as Scheduled Districts. A new nomenclature was adopted for these areas, namely, 'Wholly Excluded Areas' and 'Areas of Modified Exclusion' under the Government of India Act, 1919.

The various aspects of administration of the tribal areas were examined in detail for the first time by the Indian Statutory Commission (Simon Commission)[5]. The Commission broadly recommended that the responsibility of the tribal tracts should be entrusted to the Centre. Their reasons were —

(i) The simple tribal communities needed protection from economic subjugation of their neighbours, freedom to pursue their traditional methods of livelihood and follow their ancestral customs and traditions.

(ii) It was the responsibility of the administration to assist the people suitably so as to enable them to manage their affairs in the changing situation. This vital task could not be left to the initiative of individuals or missionary societies.

(iii) The Provincial Governments would not be in a position to spare the funds required for achieving the above objectives from their revenues.

The Commission suggested that these tracts may be classified into two categories, *viz.*, 'Excluded' and 'Partially Excluded' Areas. A new scheme was accordingly adopted for the administration of 'Excluded' and 'Partially Excluded' Areas in the Government of India Act, 1935. The frontier and border regions in Assam, the Laccadive and Minicoy Islands, the Lahaul and Spiti areas in Punjab (now Himachal) were to be declared as 'Excluded Areas'. The extensive tribal tracts in the Provinces of Madras, Bombay, Bengal, United Provinces, Central Provinces and Orissa were to be declared as 'Partially Excluded Areas'.

Sections 91 and 92 of the Government of India Act, 1935 gave extensive powers to the Governor. They can be summarised as follows —

(i) No Act of the Federal Legislature or the Provincial Legislature would apply to these areas except on the direction of the Governor who was empowered to make such exceptions and modifications as he considered necessary.

(ii) The Governor could make regulations for peace and good governance of the said areas. However, such regulations required assent of the Governor General before they could come into effect.

Thus, the traditional system of governance of the tribal people remained uninterfered by the new regime, which was in consonance with the general ethos of the country through the ages. The new sovereign, however, reserved the right to intervene and effect any change if considered necessary, but not without a conscious decision at the highest level in the executive government, that is, the Governor or the Governor General, as the case may be.

Chapter 2

The Grand Vision

While the rulers were preparing the plan with a long term perspective as reflected in the Government of India Act, 1935, the nation was in ferment under the leadership of Gandhi. The 1935 Act, therefore, did not become fully operational at any time after its enactment. The intensified noncooperation by the people with the Government after the advent of the Second World War which culminated in the 'Quit India' notice to the rulers, changed the scene totally. That the end of imperial regime was inevitable became clear much before the end of War. The form and the precise timing were matters of detail which could be settled separately. The major task before the national leaders was to give a concrete frame and also a form to the grand vision which had been the inexhaustible source of their inspiration during the long freedom struggle.

India was to become a Democratic Republic deriving its legitimacy as also the authority from the people. It would be wedded to the ideals of justice, equality, liberty and fraternity with adequate safeguards for the vulnerable groups particularly the tribal people. Thus, the perception of the people about and the formal expression of the State itself had undergone a sea-change compared to the one obtaining at the time of enactment of the Government of India Act, 1935. The most natural course in this situation was to create a totally new structure, building it up from the people's end. Every village in this frame would virtually function as a republic as visualised by Gandhiji.

But that was not to be. The reasons are not far to seek. It was largely because of (i) the legitimacy which a System tends to acquire by virtue of its very BEING, (ii) the resistance to any change by the vested interests and, (iii) what proved to be the final trump, the exigencies of the national scene after partition. Nevertheless the hoary tradition of village-republics was eulogised by the founding fathers in one voice with no reservations. There were some questions no doubt, but they were about the current status of community in the village in general. The consensus was that a beginning had to be made, howsoever modest, forthwith. The basic premises were set forth in Article 40 of the Constitution :—

> The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

It was hoped that this living element of community at the village level, embedded in the formal structure of an otherwise centralised polity of the State which was retained in the Constitution as it was before independence, will serve as the nucleus for structural transformation. All institutions of the State with centralised authority will get gradually adapted in the new mould of a non-centralised polity in keeping with the aspirations of the people.

In this general frame of reference when the case of tribal areas came to be discussed, there were no reservations about the current state of community there, in contrast to those expressed for the general areas. In fact, the ideal which was being discussed and sought to be achieved elsewhere in the country was a living tradition of the people in these areas. Repeated references were made on this point through out the debate. For example, '....the people of the North-West Frontier Province, if not ahead, are in no way behind you in many things,' asserted Khan Abdul Gaffar Khan[6], the Frontier Gandhi in his opening remarks in the Constituent Assembly. '..... This Resolution is not going to teach *Adibasis*. You cannot teach democracy to the tribal people; you have to learn democratic ways from them. They are the most democratic people on earth', declared Jaipal Sing[7], hailing from the extensive central tribal tract which had been in ferment ever since the British set their feet on that territory. The same sentiment was echoed from another major sector, the North-East. Describing that the people in the Khasi Hills are 'the most democratic of all democratic people', Syed Muhammad Saadulla[8] placed before the Assembly that 'Their native chiefs are elected by all people in their territory by adult franchise. The Chiefs could be removed as well by the people.'

In this changed frame the position was cleared again by Jaipal Singh[9"], one of the most articulate leaders of the tribal people. 'What my people require, Sir, is not adequate safeguards, as Pandit Jawahar Lal Nehru has put it. *They require protection from Ministers, that is position today.* We do not ask for any special protection. We want to be treated like every other Indian.'

Here was the real dilemma. The tribal people were admittedly the most democratic people. Their leaders were confident that the people in the rest of the country could learn a few lessons, emulate their way of life so far as democratic values are concerned. Given an even field, they needed no special protection. But they required protection from 'Ministers' who perhaps symbolised the State. The State was not only an oppressive System, as it was, but also the real source of strength of their neighbours and all exotic elements who stood against them. They were prone to encroach upon the resources of the tribal people including their land and forest. They could trap a simple tribal through other devices, primarily money and market, about which he knew next to nothing and was totally helpless in the face of their insidious operations.

The recurring revolts and insurrections were against these excesses. It was on that count that the British had to forget about annexation of the extensive tribal tracts in the usual way. They had to create a legal fiction of 'exclusion' to save their face. It nevertheless aimed at gradual acculturation through what would be seen by the unsophisticated people as friendship and benevolence. The authority of the State thereafter could be asserted at an opportune moment making that fiction real.

The transformation of the 'Excluded Areas' into 'Partially Excluded Areas' and the final 'normalisation' as perceived by the rulers was a part of this insidious process. The scheme under the Government of India Act, 1935 was the culmination of this process. Such an ignoble process is unfortunate; nevertheless it is an undeniable fact of life. The question before the Constituent Assembly in the changed context, therefore, was how to create a subsystem within the overall national frame which could serve the twin objectives of the fullest expression of the traditional democratic ethos of the tribal people and effective protection against the exotic elements as also, ironically, against the State itself. The highly centralised administrative and political structure prevailing in the country in its spirit was antipodal to the tribal system.

Even with all these reservations, self-governance at the village level for the village-community could be accepted as an axiom for the tribal areas. As noted earlier, there was a general consensus in its favour for the entire country. Moreover, *there were no reservations about the competence of community in the tribal areas to manage its affairs. In fact, it was a functioning system imbued with the real spirit of an egalitarian democratic order. The main question, therefore, was enabling the community to negotiate the transition which was imminent after independence as the nation marched ahead as a modern State for realising the dreams of the long drawn freedom struggle.*

In sum, 'the task that confronted the framers of the Constitution was to devise a suitable formula which would protect the economic interests of the tribals, safeguard their way of life, and ensure their development so that they might take their legitimate place in the general life of the country'.[10]

Protection against the State

The first issue in this frame was protection of the tribal people against the State itself. The modern State has tended to encroach upon all aspects of people's life, social, economic and political. The protection available to the community and all its members, intrinsic to the very concept of '*gaon-ganrajy*' or village-republic, had collapsed in the face of the principle of *Eminent Domain* which had been forced on this country by the British regime. This principle has remained unchallenged even after independence notwithstanding the high principles and fine sentiments aired in the

Constituent Assembly about the people being supreme and source of all powers, and formal incorporation of the same in Article 40 concerning *Gram Panchayats* as institutions of self-government.

The new structure of the State was no doubt federal in its form, but it was highly centralised. Moreover, all residual powers after detailed enumeration of specific items thereof in the Seventh Schedule of the Constitution, have been vested in the Union. In this frame, therefore, effective protection to the tribal people against the State as also the uncountable manifestations thereof, could be provided, if at all, by the Union, and the Union alone. There could be two ways of achieving this objective. The tribal tracts throughout the country could be taken out of the concerned federating units and administered directly by the Union. Alternatively, while tribal areas could remain parts of the concerned States, yet the Union could exercise overriding powers for their protection and advancement. The presumption in case of the former choice would have been that the tribal people themselves were not as yet ready for management of the affairs of large tracts which could be clearly carved out as distinct political entities. The ground reality, however, was that the division between the tribal tracts and the general areas in the Provinces and the native States was not sharp except in some parts of the Himalayan border from the North-East to North-West. The situation varied significantly from one area to another. There was virtual continuum from exclusive tribal tracts with no other people living therein to the general areas where their population was insignificant. The policy of Partial-Exclusion, in fact, got evolved in response to this demographic reality and also the fact about the varying socioeconomic situation depending on the degree of isolation of the tribal people and their interaction with other communities.

The Constitutional frame adopted for this purpose broadly followed the two-way classification of 1935 Act. The Excluded Areas were mostly termed as the 'Tribal Areas' for whose administration special provisions were made in a separate schedule, namely, the Sixth Schedule of the Constitution. For the other tribal tracts of the country, corresponding broadly to the 'Partially Excluded Areas' were named as the 'Scheduled Areas'. Special provisions for the administration and control of Scheduled Areas and Scheduled Tribes have been made under a separate Schedule, namely, the Fifth Schedule of the Constitution.

The scheme for the tribal tracts under the two Schedules envisages sharing of responsibility between the concerned States and the Union. While 'the executive power of a State extends to the Scheduled Areas therein' just like any other area in that State, it has been circumscribed by the provisions of the Fifth Schedule under paragraph 2 of the said Schedule. Moreover, it is also envisaged under paragraph 3 that 'the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area.' On similar considerations,

the executive power of the Union has been extended to 'the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State' under Article 339(2).

In any reasonable System, powers and responsibilities generally go together. It may be possible to imagine a converse situation where a person may be saddled with some responsibilities but without adequate powers for their due discharge. But once a person is endowed with any power, the situation changes. The responsibility in the related matter is attracted as a matter of course unequivocally. Thus, the responsibility both for the welfare of the tribal people and administration of the Scheduled Areas under the Constitution rests with the Union. This responsibility is to be shared by the concerned State as well, as we will discuss later in detail. But so far as the first vital issue pertaining to the protection of the simple people against the 'State' itself is concerned, the fullest vigil has to be exercised by the Union. It has been armed with the necessary powers under specific provisions of the Constitution itself.

The State and the People

The question now is 'What is this 'State' against which the Union is expected to provide protection to the tribal people ?' The State as defined in Article 12 of the Constitution 'includes the Government and Parliament of India and the Government and the Legislature of each of the States and local or other authorities within the territory of India or under the control of the Government of India'. Thus, the State in a way comprises that grand System which has been created under the law, the supreme law in this case being the Constitution itself. This System includes the Parliament comprising both the houses and the President, the Legislatures of States comprising the Assemblies and the Governors, the various departments of Government both at the Centre and in the States, a bevy of other authorities which are established under the law, and last, but not the least, the *panchayats* at different levels which are also creatures of law.

This System is not only a creature of law but all its operations have to be under the authority of law. So far as this System, or the State is concerned, nothing exists or is deemed to exist outside the legal frame. Therefore, if an element howsoever tangible in real life does not find a place in that frame, it is deemed to be nonexistent. Nevertheless, it is 'We, the People of India' whc resolved to constitute the State known as 'India' and gave unto ourselves the Constitution, which is the source of all laws and the foundation of the entire System. *We, the People of India*, therefore, precede the State. It is *'We'* who have voluntarily decided to be governed by the System in accordance with the norms laid down in the Constitution and the laws made there under.

Each person comprising *'We, the People of India'* is a citizen of the country. It is this person, and no one else, who has been deemed to be the basic unit in the Constitution. Nevertheless there are two other facets of a person's life which are vital for the humanity itself. *Firstly,* the person is not an isolate. He is a part of some social formation or the other. *The primary social formations amongst humans are the family and the community. These social formations precede the formation of the State. Moreover, they shall outlive the State, should it collapse or 'wither away'. These social formations are intrinsic to the very existence of the human society. They are a part of its evolution. They are swaymbhu unlike other social formations which are created. They precede the State and will outlive the same.*

The other facet of Citizen-State interface is that the State, by its very nature, cannot cover all aspects of a citizen's life. Any formal structure, including the State, by definition, is concerned with what is specifically provided for it in the System. Accordingly, its scope has to be limited to the concerned provisions in the law by whatever name they may be called. The life of the people, on the other hand, is unbounded. It has countless facets. *The Constitution accepts this reality.* It is in keeping with this perception of life that the Constitution specifically recognises the cultural and educational rights of the people under Article 29(1) and freedom of conscience and practice of religion under Article 25(1). Such recognition however, cannot be treated as a license to do anything at will. Moreover, a man's life does not comprise a jumble of assorted parts. It is an organic whole with intricate interrelations amongst different parts as also between each part and the totality itself. Therefore, even those aspects of life which are formally excluded from the purview of the Constitution and the law have to abide by some minimal norms such as 'public order, morality and health' as provided in Article 25(1).

But the community, before the formation of the modern State or its rise in other pre-modern forms, itself comprised the totality of life of its people including those aspects which have been assigned to the State by the People, may be, voluntarily. The social systems amongst different people in general had gone through a long process of gradual transformation from one stage to another spread over thousands of years before the formation of the modern State. They include feudal systems, monarchies and even the colonial State. In this entire process, a variety of compromises between the social system and the other superior formations preceding the modern State had to be accepted by the people. It has been so in our own country as well. However, in our case it can be said that the autonomy of the village community to manage its affairs had been honoured, by and large, before the advent of the British rule. The tribal people living in the remote hilly and forest regions, besides many other people elsewhere as well, however, remained outside this 'main stream' of political evolution from the state of *swayambhu* community to the highly

intricate and complex web of the modern State. The superimposition of the formal system by the British on the autonomous system prevailing at the village level, therefore, resulted in confrontation between the community and the System. The compromise formulations which were worked out in the tribal areas have been discussed in detail earlier.

The basic issue before the framers of the Constitution, therefore, was to workout a harmonious construct which may fully accommodate the ground reality concerning the tribal people. In their case, the community was fully functional and effectively managing its affairs in accordance with the customs and traditions. Nevertheless this micro-system was located within the formal structure of the State comprising the System which had been created as also is being governed by a bevy of exotic laws. The crux of the issue, thus, was to protect the people against the new System which was being created supposedly on their behalf by their representatives. However, while setting the parameters of the new polity in terms of the fundamental rights in Part-III an all inclusive frame was adopted.

Law and *Parampara*

As we have noted above, the Constitution, as a general proposition, excludes from the ambit of formal legal formulation, certain aspects of life like culture and religion. The 'law' as envisaged for the purposes of Article 13 besides including 'any ordinance, order, bye-law, rule, regulation, notification' also covers 'custom and usage'. The custom and tradition of the community, by and large, comprise the essence of the tribal system. They inform all aspects of their day-to-day life, in fact, their very identity. Having included custom and usage within the ambit of 'law' for the purpose of setting basic parameters, the question is what happens when a formal 'law' runs counter to the custom and usage of a people. This question is vital for the quality of life and all those values which our Constitution stands for in real life because the ambit of this 'law' does not include only the laws enacted by the Parliament and the State Legislatures. It includes the bewildering net of rules, regulations and even notifications which are being issued by numerous authorities under the purview of delegated legislation, which have the force of law. In fact, the law usually lays down the conceptual frame while the operational details in furtherance of that idea are provided for in the rules, etc. It is the net of these rules, etc., which the people have to contend with in their day-to-day life.

It is this possible conflict situation between the custom and tradition and the laws of the land which has been dealt with in the Constitution specially for the Scheduled Areas and Scheduled Tribes. It must be noted well at this stage that they together comprise the real frame of a democratic polity nearest to the ideal of 'of the people, by the people, for the people.' The 'custom and usage' of the people have been put, *albeit* for the purposes of Article 13 only, on the same pedestal as any other law as discussed above. It would, therefore, be reasonable, nay, natural to assert that in case

of any conflict, contrary to the general 'belief', there is no reason why the custom and usage must necessarily give way to the formally enacted law even by the Parliament. In fact, the *'custom and usage' represent a higher 'genus' of laws. They are not made but get evolved over a period of time imbibing the wisdom of the people themselves.* Any change in the same, therefore, should ordinarily be expected to follow the same course of consensual evolution amongst the concerned people. In fact the terms 'custom and usage' are not adequate to capture the spirit of this proposition which is best reflected in the *Sanskrit* term *'parampara'. Parampara* is like a flowing stream. All that is rendered incongruous and superfluous, as time flows, is cast aside irrespective of its value in the earlier phase of people's history. Similarly the spirit of changing time is continuously imbibed by the people as a part of their *parampara,* based on their experience and guided by the consensus amongst the elders and other wise people.

It is thus, clear that a mere law of a legislature cannot supersede the *parampara* of a people. It is best exemplified by the usage in English Law where 'usage' is deemed to be the Constitution itself. All laws enacted by the Parliament must pass the test of being in harmony with that unwritten law of all laws. The laws enacted for the subject countries in the same very Raj ironically not only violated that basic premise but were antipodal to the same. They had the aura of the imperial authority which superseded every thing 'native'. The native was presumed to be inferior. Their society was not even worthy of being called a really human society. The hangover continues even after half-a-century of independence. The ruling elite in particular has instinctive preference for the formally enacted. There is presumed superiority in their favour. So far as the *parampara* of the people is concerned, there is, at best, patronising and condescending demeanour in its favour. The obeisance of the people to the law, on the other hand, is largely an expression of their helplessness before the might of the State which still carries the halo of imperial glory. Nevertheless *parampara* continues as the general frame of reference for the common man who is hardly aware about the nature of those laws and the worth of their complex web.

The *parampara* of a people, thus, is supreme. But it is so with an important *proviso.* There is a higher frame of reference even for the *parampara.* It can be said to comprise the human values sought to be captured by, for example, the Declaration of Human Rights. The *Preamble* of our Constitution also comprises those abiding values. No *parampara,* howsoever dear to a people, can be expected to affront these values and must give way to them, should there be any conflict. The *fundamental* rights of the citizens also have a special place in the scheme of a modern State and must be ordinarily honoured.

It is in this background of the possible dissonance between the formal law and the *parampara* of the tribal people, who remained unaffected by the evolution of polity elsewhere, which has been generally anti-people and has been instrumental in consolidating other interests, that necessary space with a consonant frame was sought to be created in the Constitution. Besides the general incorporation of 'custom and usage' in the frame of 'law' with implicit higher pedestal compared to general laws, as discussed above, a special niche for the simple tribal communities has been created even within the frame of fundamental rights in Part III. Accordingly, special provisions can be made for the Scheduled Tribes as an exception to the general provisions under Articles 15 (Prohibition of Discrimination etc.), 16 (Equality of Opportunity etc.) and 19 (Protection of the Right to Move Freely and Reside and Settle anywhere) besides the specific provisions under Articles 25. (Freedom of Conscience etc.) and 29 (Cultural and Educational Rights).

Law and the Fifth Schedule

It is, however, the Fifth Schedule of the Constitution which comprises the most comprehensive provisions for the protection of the tribal people living in the Scheduled Areas against the State as also other exotic forces. The opening provision of this Schedule in paragraph 2 makes the executive power of the State in respect of the Scheduled Areas therein 'subject to the provisions of this (Fifth) Schedule.' It is followed by extension of the executive power of the Union under paragraph 3 'to the giving of directions to the State as to the administration of the said (Scheduled) area.'

It will be useful to mention at this stage that the executive power of the Union is vested in the President and that of the State in the Governor under Articles 52(1) and 154(1) of the Constitution respectively. They, however, act on the advice of the respective Councils of Ministers, as per the provisions of Articles 74 and 163 respectively. Nevertheless the Oath or the affirmation, which they take before assuming their offices, places them on a different pedestal compared to all other office-bearers of the State including the Council of Ministers mentioned in the Constitution. In the said Oath or affirmation by the President and the Governor under Article 60 and 159 respectively, they clearly state that *'I... will, to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India.'*. The Oath or affirmation of all other office-bearers in the Third Schedule, on the other hand, includes a simple clause to the effect that *'I will faithfully and conscientiously discharge my duties'* or a variant thereof.

In the scheme of sharing of the responsibility for the Scheduled Areas in terms of the executive powers of the Union and States, the final authority, thus, vests with the Union while the States are expected to manage their affairs in accordance with the law subject to directions of

the Union. It is the duty of the President and the concerned Governors 'to *preserve, protect and defend' the Constitution, including this special feature concerning the Scheduled Areas, and the law, including the 'custom and usage' of the tribal people which, as discussed earlier, are central for the well being of the tribal people.* As we will presently see, the Governor has the most vital, central and unusual, role to play in the scheme of the Fifth Schedule. Moreover, it is he, who is the link between the Union and the State. Accordingly under paragraph 3 of the Fifth Schedule 'the Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State.' This Report is vital since this Report, and *only* this Report can form the basis of any directions which the President may deem necessary to give to the States as 'a final arbiter of the administration of the Scheduled Areas.'

The Governor has been bestowed with necessary powers to discharge this role and associated responsibilities. Law is the essence of a System, the operational form of the State. Paragraph 5 of the Fifth Schedule deals with the 'Law applicable to Scheduled Areas'. Sub-paragraph (1) of this paragraph authorises the Governor to make 'such exceptions and modifications' in 'any particular Act of Parliament or of the Legislature of the State' in its application to 'a Scheduled Area or any part thereof in the State' as he may specify in the notification. This sub-paragraph begins with the *non-obstanate* clause 'Notwithstanding any thing in this Constitution'. It ends with another significant clause, that is, 'any direction given under this sub-paragraph may be given so as to have retrospective effect.' There in no time-limit whatsoever concerning 'retrospective effect.' Thus, the entire legal frame of the 'State' sustaining the System is amenable to be suitably adapted for the Scheduled Areas. It can be done *'Notwithstanding anything in the Constitution.'* It can be subject, however, to one and the only condition that it will not affect the basic premises of the Constitution reflected in the Preamble. In fact, the Preamble has to be the guiding spirit for the said adaptation aimed at promoting the well-being of the people living therein, in keeping with the special socioeconomic situation prevailing in the Scheduled Areas for the time being. *The Fifth Schedule of the Constitution, therefore, has been rightly described as 'a Constitution, within the Constitution.'*

A special feature of the above provision about adaptation of laws is that the Governor, and *only the Governor,* is empowered to do so. It is the exclusive prerogative of the Governor and no one else, not even the President who otherwise is the last arbiter in matters concerning the Scheduled Areas. Thus, the procedure for adaptation of law under sub-paragraph 5(1) does not envisage consultation of any description whatsoever including with the Tribes Advisory Council, an institution established under the Fifth Schedule itself. Nor does it envisage approval of any authority including the President before the coming into force of any

decision of the Governor in that regard. This holds good even where the adaptation concerns any Act of Parliament. *It may be noted here that even the President does not enjoy such a power concerning the law enacted either by the Parliament or even by a State legislature. Thus, the Governor has been bestowed with powers concerning adaptation of law in the Scheduled Areas which are more extensive than any other authority including the State Cabinet, the Union Cabinet and the President.*

These unusual powers of the Governor are aimed at creating an even ground for the advancement of the tribal people in the Scheduled Areas. They have to be used for removing all those blocks and for filling all such ditches which may have appeared because of the dissonance of the laws of the land with the socio economics situation of the tribal people as also their customs and traditions. The adaptation of laws, thus, pursued effectively can *tame the System* which otherwise may become overbearing in the simple setting of the tribal people, whose biggest weakness may be simply unfamiliarity about the System and their inability to understand and deal with the same on terms of equality. In the ordinary course, it is expected that the System is after all expression of the collective will of the people. Therefore, if there is any dissonance or deviance, the concerned persons, groups or even communities should mend their ways and adapt themselves to the norms of the System as expressed in the laws of the land. But in the case of tribal people, the situation is different. They comprise functioning communities. They are effectively managing their affairs in accordance with their tradition and customs, which need not be in consonance with the exotic legal frame. The process of adaptation, therefore, has to be the other way round. It is the legal frame which must be suitably adapted for removing the dissonance, if any. It is on the even ground so created that the tribal people can be expected to march ahead with confidence imbibing the spirit of modern age, telescoping the long process of change spanning over thousands of years into a few decades, *as per* their perceptions and moorings.

Peace and Good Government

'Peace and good government' is the central theme of the Fifth Schedule. The objective is the well being of the people and creation of a social and economic order as envisaged in the Constitution imbued with the spirit of its Preamble. While 'peace and good government' has not been defined, the emphasis placed in sub-paragraph (2) of paragraph 5 on the nature of legislative business by way of illustration, is indicative of its scope as also its tenor. The items covered in these illustrations are (a) transfer of land, (b) allotment of land and (c) moneylending. The intrusion of money economy and its impact on the traditional command of the tribal people over their resources enjoyed for centuries, which is the foundation of their entire social, economic and political system, have been the biggest cause of turmoil in these areas. The protection of simple tribal people against

the more articulate neighbouring communities had been one of the main objectives of a variety of protective laws and other formulations which were tried out by the British during the Raj. Protection of the tribal people against all forms of exploitation can be said to be the only foundation on which a system dedicated to 'peace and good government' can be built. Any other measures can sustain only on this sound foundation, without which they may all turn out to be infructous exercises like building castles in the air or raising grand mansions on moving sands.

The scope of legislation for peace and good government under sub-paragraph 5 (2), thus, is boundless. It cuts across the formal boundaries set out for the Union and the State under the Seventh Schedule. The legislation under this provision is envisaged in two forms, that is, notifications and regulations to be issued by the Governor. Sub-paragraph (2) authorises the Governor to 'make regulations for peace and good government of ..... a Scheduled Area.' In making any such regulation sub-paragraph (3) of paragraphs 5 of the Fifth Schedule authorises the Governor even to 'repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question'. The specific provision in respect of adaptation of laws under sub-paragraph (1) noted earlier would set to rest any doubts about the *boundless scope* of the regulation-making power of the Governor under sub-paragraph (2) and make the same clear and unequivocal.

It may be useful to clarify at this stage the scope of the term 'regulation' so as to remove any doubts and to avoid any confusion which may be caused because of the use of that term in the Fifth Schedule. The Regulations issued by the Governor for the Scheduled Areas stand on the same pedestal as any Act of Parliament or of State Legislature. In fact, 'tribal affairs' or 'Scheduled Areas' find no mention in any of three lists of the Seventh Schedule. Therefore, the State Legislature has no jurisdiction to legislate exclusively for the Scheduled Areas and the Scheduled Tribes. The legislative power in respect of the Scheduled Area, with boundless scope, has been vested with the Governor under the Fifth Schedule. *The Governor, thus, is the Legislature for the Scheduled Areas covering all aspects thereof.* The Parliament, however, can *perhaps* invoke legislative jurisdiction in respect of the Scheduled Areas and Scheduled Tribes as well, if necessary, under Entry 97 of 'List I-Union List' namely, 'Any other matter not enumerated in List II or List III...'

The legislative powers bestowed on the Governor, however, do not in any way inhibit the scope of the general legislative powers of the Parliament or the State Legislature with regard to the Scheduled Areas. Any Act of Parliament or a State Legislature covers, like any other area, the Scheduled Areas as well, as a matter of course. It is also within the competence of the Parliament and the State Legislatures to make special provisions therein for the Scheduled Areas or the Scheduled Tribes keeping in view their social and economic situation for which the Constitution itself

contains many special provisions discussed earlier. *What is not given to the State Legislature is the power to legislate exclusively for the Scheduled Areas. That prerogative rests with the Governor, and the Governor alone.*

There is, however, a significant, rather vital change with regard to the applicability of the general laws to the Scheduled Areas compared to the provisions under the Government of India Act, 1935 and other pre-independence regulations in that regard. Any law of the Federal Legislature or the Provincial Legislature would not apply to the Excluded or the Partially-Excluded Areas as a matter of course. It was the Governor, who was empowered to extend the same to these areas with such exceptions and modifications as may be deemed necessary by him. *In case, the Governor took no action, the concerned law would simply not apply to those areas. Thus, the Governor and the Governor alone was the Legislature for the Excluded and the Partially Excluded Areas. His decision to extend a law, with suitable exceptions and modifications, or even his non-decision about any law was a legislative action par excellence.*

Notifications and Regulations

Under the provisions of the Fifth Schedule the power of the Governor to make exceptions and modifications in any Act is no doubt boundless. But all Acts of Parliament and concerned State Legislature' now cover the Scheduled Areas as a matter of course. *In case the Governor takes no action, or in the event of indecision or non-decision on his part, the general law comes into force in the Scheduled Areas as well like in any other areas and remains in force thereafter until the Governor may decide otherwise.* Thus, any change or even non-application of the relevant Act depends on the specific action by the Governor. For this action, however, the Governor is the sole authority with no provision for prior consultation or formal approval afterwards, before the notification about the change becomes effective.

The position with regard to the regulation-making power, which also has boundless scope, on the point of prior consultation and approval later, is different. Sub-paragraph 5 of paragraph (5) lays down that 'no regulation shall be made under this paragraph unless the Governor making the regulation has consulted such (Tribes Advisory) Council.' Thus, prior consultation with the Tribes Advisory Council is a Constitutional mandate for the Governor to abide. Similarly, under sub-paragraph 5 (4) 'all regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.' Thus, in the matter of regulation-making the President is the final arbiter. If no assent is given by the President, the matter ends there unlike the provisions concerning assent to the Bills passed by the Parliament in whose case the final verdict, *albeit* after going through the necessary motions prescribed by law, is with the Parliament.

There is some confusion about the mandate concerning the consultation with the Tribes Advisory Council and the consent of the President referred to in sub-paragraphs (5) and (4) respectively of paragraph 5 of this Schedule. It must be noted that the subject matters of sub-paragraph (1) and of sub-paragraph (2) are totally different. Sub-paragraphs (1) envisages Governor's 'notification' as an instrument of amendment of any Act. On the other hand, sub-paragraph (2) speaks of 'regulation' as a law on the subject which stands on the same pedestal as any Act of a Legislature including Parliament. The scope of the former provision, that is, 'notification', however, is limited to making changes only. A new regulation having the force of law for the Scheduled Areas can be made only in the form of a 'regulation' under sub-paragraph 5 (2).

It may also be noted that the *'non-obstanate'* clause 'notwithstanding any thing in this Constitution' used in the Fifth Schedule relates only to sub-paragraph (1), that is, the notification-issuing power of the Governor to make exceptions and modifications. It *does not extend* to the provisions concerning making of regulations including the needed amendments in other laws covered by sub-paragraph (2). Similarly, the power to give retrospective effect with no limits whatsoever relates only to the notification-issuing power of the Governor. Any provision concerning retrospective effect in any regulation, having the force of law, has to be governed by general provisions of the Constitution. Similarly, the provisions concerning prior consultation with the Tribes Advisory Council in sub-paragraph 5(5) and assent by the President under sub-paragraph 5(4) refer only to regulations made by the Governor and *not* to the notifications issued by him under sub-paragraph 5(1).

The distinction made between the 'regulations' and the 'notifications' will be clear if the scheme of the Constitution concerning the Scheduled Areas is appreciated. The regulation-making power of the Governor is normal legislative power which a State Legislature or Parliament could have exercised. But the simple life of the tribal people is not amenable to the fine classifications as envisaged in the distribution of various items in the Seventh Schedule. The approach in the framing of laws for the tribal people, therefore, has to be holistic. Moreover, the Legislature of a State or the Parliament itself cannot always be expected to be moved by high ideals which are set in the Constitution and implicit in the Fifth Schedule, that is, protection and advancement of the tribal people.

The Founding Fathers were concerned about the possibility of basic issues being influenced by considerations of political parties (see below Article 275 also) or even the sheer tyranny of numbers, a bane of representative democracy. The serious issue of building up a legal frame in consonance with the ethos of the tribal people for furtherance of their well-being, besides providing effective protection against exotic interests and even their neighbours, whose interests might influence even the

deliberations in the State Legislature and the Parliament, had to be the responsibility of a select small group. The Tribes Advisory Council was created basically as a forum for considering in detail the affairs of the Scheduled Areas and the Scheduled Tribes (See below). The Governor was charged with the responsibility of legislation for the Scheduled Areas in the form of regulations in consultation with the Tribes Advisory Council. Since the President has been endowed with the final authority in respect of the Scheduled Areas and the Scheduled Tribes, his assent has been made mandatory before the coming into force of the concerned regulation.

The regulation-making powers of the Governor are in a way plenary as they cover the entire spectrum of legislative authority of the State. It is, thus, no doubt boundless but it has to be in consonance with the basic structure of the Constitution which **'We, the People of India'** had created. This is as it should be. All the peoples of the country, including the tribal people, are committed to imbibe that spirit and proceed along the grand avenue as envisaged therein. In an ideal setting, no special provision outside the ambit of the regulation-making powers of the Governor was really necessary. But that is not how the Founding Fathers felt in view of the prevailing situation in the tribal areas.

The situation in the tribal areas really never became normal in the sense that the tribal people have not been able to reconcile themselves with the presence of the overbearing System, the overt expression of the omnipotent State claiming *Eminent Domain* over their territory. The situation was met during the British Raj by excluding these areas from the purview of 'regulations', the formal expression of the State for the people at that time. They were treated as 'non-regulation' tracts. In the changed context of independent India before proceeding to build up the edifice for future in consonance with the spirit of the Constitution even in the Scheduled Areas, as stated earlier, it was necessary to create an even ground for all. This objective was in harmony with the tribal ethos. Moreover, it was also to be ensured that that harmony was not disrupted as a result of the activities of the State as the nation moved ahead.

All actions of the State have necessarily to be rooted in some law or the other enacted by the Parliament or of the concerned State Legislature. Thus, vigil had to be maintained about the implications of the legislative activity by the concerned authorities continually and action, if any, had to be prompt and effective. In such a situation, it might not be possible to afford the luxury of going through the process of regulation-making or even ensuring meticulously that the action envisaged was in full conformity with all the provisions of the Constitution. The extraordinary provision under Sub-paragraph 5(1) has been made in response to this extraordinary need for achieving the twin objective of (i) creating an even ground and (ii) removing the dissonance between the tribal situation and the normal activities of the State rooted in the bevy of laws enacted from time to time. The Governor has been made supreme. He can adapt any law of the State or the Centre, 'notwithstanding any thing in the Constitution' without

consulting any authority whatsoever including the Tribes Advisory Council through a *simple notification* with no mandatory requirement for its approval by any authority whatsoever, including the President, before it becomes effective.

Such is the faith reposed by the founding fathers in the exalted office of the Governor, for he has the solemn duty not only to abide by the Constitution but also to uphold the Constitution. However, in a milieu of trivialisation of even Constitutional mandates and values through performance of rituals as per the letters of the law with scant regard for the spirit thereof not only the intent but even the content of this extraordinary provision has come to be questioned by all concerned including the concerned Governors. It is sad that the approach has been supercilious. The fact that two totally different provisions, that is, notification and regulation-making are contained in the same paragraph has also contributed to the confusion about this vital power of the Governor concerning amendment of all laws through a simple notification. The State Governments therefore, are prone to seek clarification from the Union Government whether the Governor can amend a central law through a simple notification under paragraph 5 (1). Such ignoble solicitations cannot but naturally be favoured with the benign advice about careful handling of such delicate matters with prior consultation with the Union Government. It suits the States whose record of handling tribal matters even otherwise in general is dismal. What happens to the simple tribal, whose area has been flooded ironically after independence, with imperialist laws enacted for the 'slaves' of that era, is of no concern of any one in the land including the Governors and the President notwithstanding the solemn oath they take for upholding the Constitution. Not a single Governor has considered adaptation of any central law, howsoever incongruous and draconian in the context of the tribal setting, as a matter worthy of invoking his discretionary powers bestowed on him with great expectations.

A perusal of the provisions for the Tribal Areas under the Sixth Schedule will help in clinching this issue about this extraordinary power of the Governor. In the case of the Tribal Areas the regulation-making power concerning specified subjects vests with the concerned Autonomous District/Regional Council. Therefore, the Governor has no regulation-making power for those areas compared to that for the Schedule Areas. Nevertheless, the Governor has been invested with necessary powers to amend any law of the State Legislature or the Parliament on the same lines as in paragraph 5(1) of the Fifth Schedule. While this power remains as it is in the case of Tribal Areas in Assam, a significant change has been effected in the case of Meghalaya, Mizoram and Tripura. In their cases, the power to amend any Act of Parliament now vests with the President and not the Governor as in the cases of the Tribal Areas in Assam and the Scheduled Areas elsewhere. The incontrovertible conclusion is that the investment of necessary powers and also discretion with the Governor in

relation to the amendment of the Acts of Parliament in their application to the Scheduled Areas is a part of the Constitutional design for meeting the unusual situation which the tribal people are facing in the Scheduled Areas. The provision is unequivocal. It can admit no other interpretation. Non-use of this clear provision even as the tribal people are faced with the biggest challenge of survival in their history cannot but be described as dereliction of duty by the highest in the State to say the least.

Financial Provisions

As stated earlier, any endowment of authority necessarily implies bestowal of associated responsibility irrespective of the fact whether it is formally expressed or not. Any responsibility, in its turn, implies creation of structure, wherever necessary, for discharging that responsibility. It has to be supported with adequate financial provisions to sustain the structure and also to support activities or programmes which may be considered necessary in that regard. Like division of legislative and executive authority between the Union and the States, the Constitution also provides for 'Distribution of Revenues between the Union and the States' under Articles 268 to 281 in Part XII. Not only the state of finance of different States under the said scheme is bound to be highly variable, for example, as between the States like Orissa and Maharastra, but the Union is in a much stronger position compared to the States in general. We, as a nation, are committed to removal of inequality as envisaged under Article 38 (2) not only amongst different sections of the society but also amongst different regions. It is, therefore, necessary to ensure that the weaker States are suitably assisted so that they can come up to the level of stronger States. This special dispensation in favour of needy States has been provided for under Article 275(1) of the Constitution —

> 'Such sums, as Parliament may by law provide, shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine *to be in need of assistance,* and different sums may be fixed for different States :'(emphasis added)

The sole consideration in the assignment of grants-in-aid under this clause is the *'need of assistance'* in each case. It is for the Parliament to assess the need and determine the quantum of assistance. The quantum so determined is bound to vary from one State to another. Thus, the principle of positive discrimination in favour of needy States has been built into the Constitution itself. Moreover, the discretion in this regard rests wholly with the Parliament. But this discretion is subject to a process of consultation. 'The principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India' are to be determined under clause (2) of Article 280 by the Finance Commission. The President, under clause (1) of the said Article, is required to constitute a Finance Commission 'at the expiration of every fifth year, or at such earlier

time as the President considers necessary'. The Parliament, though not bound by the recommendations of the Finance Commission, is obliged to consider the same before taking a decision about the grants-in-aid made in favour of different States.

The scope of this provision concerning grants-in-aid to the States and the discretion vested in the Parliament therefore is wide enough to cover all sorts of contingencies. It should ordinarily cover the special needs of a State which may arise in respect of the administration of the Scheduled Areas and the wellbeing of the Scheduled Tribes living therein. However, the fact remains that such need has to be assessed as a part of the general needs of a State in the five-yearly exercise by the Finance Commission. The deliberations of the Commission cannot but be guided by the wisdom of its member. These recommendations, for whatever their worth, thereafter are to be considered by the Parliament. The nature of class and group composition and the considerations upper most in the minds of the honourable members of the Parliament can be highly variable, even volatile. Lastly, even when every thing may be moving in the right direction, the end result could still be guided by the ephemeral interests of political parties, which is inherent in a Parliamentary democracy. *The possibility that the small voice concerning the needs of the tribal affairs may be lost in the tumultuous combats amongst bigger interests, therefore, could not be ruled out.*

The question, therefore, was whether a matter like tribal affairs and administration of the Scheduled Areas could be left to be dealt with by the Parliament as a part of the general exercise for determining the financial needs of the concerned States. Such an approach could not be in consonance with other provisions of the Constitution in that regard, such as those concerning 'Law applicable to Scheduled Areas' under the Fifth Schedule as also the provisions concerning 'the drawing up and execution of schemes essential for the welfare of the Scheduled Tribes' under Article 339(2). The special provision concerning the vesting of legislative powers for the Scheduled Areas in the Governor, which is the most basic element relating thereto in the Constitutional frame, to the exclusion of the Parliament and also State Legislatures, therefore, had to be matched by appropriate provisions concerning financial matters. There was unequivocal consensus in the Constituent Assembly that the tribal affairs must be deemed to be a national concern, above any other considerations whatsoever including political interests. Accordingly, a special provision was made as an exception to the general scheme of Article 275(1) in the form of a proviso —

> Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such *capital and recurring sums as may be necessary to enable that State* to meet the costs of such schemes of development as may be

undertaken by the State with the approval of the Government of India for the purposes of promoting the welfare of the Scheduled Tribes in the State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of the State. *(Emphasis added)*

Thus, we have the strongest possible mandate as a part of the Constitution concerning the financial counterpart of the Constitutional authority and responsibilities about the tribal people and the Scheduled Areas. Once the Government of India and the State Government agree upon a scheme for promoting the welfare of the Scheduled Tribes in a State, the entire liability in respect of that scheme, irrespective of its nature-capital or recurring - has to be met by the Government of India as grants-in-aid of the revenues of that State *'as may be necessary to enable that State to meet the costs of such schemes'*. The same principle applies to the schemes which may be prepared for raising the level of administration of the Scheduled Areas, *albeit* limited to what may be considered as necessary to attain the level of administration of the rest of the areas in that State. Read with the substantive clause, that is, Article 275(1), the said grants-in-aid become a Charge on the Consolidated Fund of India. They are not voted. Moreover, the Proviso, by its very nature, is also outside the purview of the Finance Commission. Therefore, *the grants-in-aid in respect of all matters concerning the Scheduled Areas are to be decided solely by the President, without any reference to any other authority in keeping with the spirit of the fact that he has been vested with the final executive authority concerning these Areas.*

People's Association

The policy of exclusion, which to some extent has been continued in the form of scheduling of areas, has been perceived by different people in widely different ways with far-reaching implications for the tribal people. The simple and natural perception about exclusion of an area, from the people's end, is that thereby the ominous shadow of the State disappears. The people tend to be reassured that they can manage their affairs in accordance with their tradition and customs as hitherto before without any interference from exotic centres of authority of any description whatsoever. But this was neither the content, not the intent, of the legal frame which was ostensibly created by the British Regime for that purpose. The legal provisions merely excluded these areas from the purview of the legislative as well as the administrative authority of the concerned Legislatures and Governments, both Federal and Provincial. Under these provisions, it was left to the discretion of the Governor to bring these areas under the purview of general laws and administration of the concerned province, with suitable adaptations or even by creating a new frame altogether.

Thus, *the fact was that the shadow of the State did not disappear, as perceived by the people. It had become imperceptible for the time being.* It was done as a part of a well-considered plan to regain the lost ground and to extend the area of effective control in these hostile territories once the prevailing winds changed their course. The primary duty of the authorities concerned with these areas was, therefore, to sense the direction of prevailing winds there, on the basis of which the chief executive, that is, the Governor could plan the next move towards their final assimilation in the Great Empire. Here was Machiavelli at his best. The question of association of the people in this process, therefore, was out of question.

This could not have been the objective of Independent India. As discussed earlier, even for the rest of the country the centralised System was accepted only because of compulsions of the situation prevailing at that time. The ideal, as perceived from the people's end, was a republic-like system for each village with the role of the State being strictly circumscribed to the basic essentials. This ideal was set out in Article 40 of the Constitution. Once the objective was enshrined in the Constitution and the reigns of the regime had firmly come in the hands of people's representatives in a country which lived in its villages, the structural transformation from the centralised to the non-centralised polity could only be a matter of time. The Parliament and the Legislatures of concerned States in the new democratic regime were the best guardians of the people's interest as also their aspirations. A step-by-step building up of the people's institutions, generally known as *panchayats* (the term *panchayat* in common parlance signifies the collectivity of the people and not a coterie of their representatives- Author) which had been badly mauled during the British regime, was to be pursued with due caution, care and concern.

The situation in the tribal areas was just the opposite. The traditional system of self governance, specially at the village-level, had survived the ravages of the Raj. *Thus, what was sought to be achieved under Article 40 elsewhere, was already there on the ground in the Scheduled Areas.* The laws of the land, however, were not only not in consonance with the traditions and customs of the tribal people but they did not recognise even the very existence of community. *The real task in the context of the tribal areas, therefore, was to ensure that there was sufficient space in the general legal frame of the System for (i) the traditions and customs of the people which, as discussed earlier, stand at a higher pedestal in a truly democratic polity and (ii) the self-governing system at the village-level.* The need in this case was not, *repeat not*, resuscitation of a ravaged self-governing system as elsewhere in the country but protection of what was on the ground.

Thus, the dawn of independence in the case of the Scheduled Areas basically created a conflict situation ironically between the people and the State. Its resolution no doubt needed a one-time exercise as well, like

the one for the general areas, of preparing an even ground for all actors to play in accordance with the new rules which may be set out for achieving the Constitutional goals. But in the case of tribal areas it was, in addition, necessary to take some cautious, yet bold measures for building up a new System on the foundation of the existing egalitarian System of theirs, drawing upon its strength but without in any way harming the same. This was succinctly expressed by the then Prime Minister Pandit Jawahar Lal Nehru himself in his famous *Panchasheel*[11] :

(1) *People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.*

(2) *Tribal rights in land and forests should be respected.*

(3) *We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will., no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.*

(4) *We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to, their own social and cultural institutions.*

(5) *We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved.*

It is obvious the Governor and the administration at his command could not be expected to have a realistic appreciation of the situation from the people's end. This new role was just the opposite of the role of the Governor of the Imperial regime alluded to earlier. Instead of sensing the situation in the tribal areas for advancing the Imperial cause, the new concern had to be strengthening people's institutions and advancing the cause of a truly democratic polity. The Legislature of the State and even the Council of Ministers, which was supposed to advise the Governor in this vital matter concerning the Scheduled Areas and the Scheduled Tribes, could not be expected to measure upto this task. It was precisely due to this consideration that *all Legislatures were excluded from the scheme of legislation as also financial allocation for the Scheduled Areas and the Scheduled Tribes.* Thus, in the new setting, another forum for assisting and advising the Governor was essential. That forum should be capable of reflecting on the problems, the perceptions and the aspirations of the tribal people, about whose affairs the Governor has been endowed with the most extraordinary and unusual powers. The provision of the Tribes Advisory Council in paragraph 4 of the Fifth Schedule basically had the above role in view.

According to the provisions of this paragraph, a Tribes Advisory Council shall be established in each State having Scheduled Areas therein. It shall consist of not more than twenty members. As nearly as three-fourths of the members of this Council shall be tribal members of the concerned Legislative Assembly. In case, the number of tribal MLAs is less than the required number, the remaining seats can be filled by other members of the Scheduled Tribes. A Tribes Advisory Council shall also be established in such other States, if the President so directs, which do not have Scheduled Areas but have Scheduled Tribe population.

The Tribes Advisory Council so constituted, on the face of it, is eminently qualified to serve as a sensing ground for the Governor before taking any decision concerning the Scheduled Areas and the Scheduled Tribes. Two specific provisions have been made in the Fifth Schedule itself to make such interaction mandatory. On the one hand, a duty has been cast on the Tribes Advisory Council under sub-paragraph 4(2) to advise the Governor on such matters which may be referred to the Council by him pertaining to the welfare and advancement of the Scheduled Tribes in the State. The reference in this case, however, is discretionary. It is not necessary that the Governor should refer each and every matter to the Council. Such a provision was likely to make the administration of tribal affairs cumbersome and dilatory which would have defeated the very purpose of special provisions to ensure prompt and effective action. Therefore, as per the provision in the Fifth Schedule, whenever the Governor feels that a proposal concerning, for example, certain policy matter or scheme should be specially checked, in respect of its suitability for the tribal people in general or certain specific situations, he has the choice to refer the same to the Tribes Advisory Council.

The discretion of the Governor purporting to consultation with the Tribes Advisory Council ends here. As we move on to the other role of the Governor as the *Legislature for the Scheduled Area,* there are two situations which we have discussed earlier. No reference is needed before or after the adaptation of a law by the Governor under sub-paragraph (1) of paragraph 5 of the Fifth Schedule which he can do through a simple notification. The forum of the Tribes Advisory Council is, however, available should he feel the need for a recheck and reassurance about the people's perception about the envisaged change.

In the case of regulation-making role, however, the situation is entirely different. It is a normal legislative function especially assigned to the Governor in respect of the Scheduled Areas under sub-paragraph 5 (2) as against the extraordinary role about adaptation of laws under sub-paragraph 5 (1). The assignment of normal legislative functions to one person in place of people's representatives would go against the grain of democracy. It is in this context that consultation with the Tribes Advisory Council in the framing of regulations by the Governor has been made mandatory under sub-paragraph 5(5).

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It may be noted here that the advice of the Tribes Advisory Council in any of these cases, including regulation-making, is not binding on the Governor. It is in the context of such uninhibited discretion that some doubts have been raised about the presumption that the Governor is bound by the advice of the Council of Ministers in respect of adaptation of laws under sub-paragraph 5(1). This will need a deeper analysis. While the power of the Governor regarding adaptation of laws is boundless, the executive authority of the State even for the general areas extends only to the matters covered in List III as also in List-II, *albeit*, conditional. If it is held that the Governor is bound to act on the advice of the Council of Ministers in all matters concerning Scheduled Areas, an anomalous situation arises. The powers of Governor under sub-paragraph 5(1) to amend the laws cover even the Union List. Therefore, the Council of Ministers assumes, indirectly through the Governor, the extraordinary jurisdiction bestowed on him over all affairs of the Scheduled Areas including amending Central laws, in which case even a reference to the Union Government or the President in not necessary.

The scheme of the Fifth Schedule is clear and categorical. The executive power of the State in the case of the Scheduled Areas has been made subject to the provisions of the Fifth Schedule as also the directions of the President. But if the Governor were to act on the advice of his Council of Ministers in the case of his special responsibilities under the Fifth Schedule, the entire scheme of the Fifth Schedule, can be seen to stand on its head. In this case, the executive power of the State would stand elongated to the matters covered by the Union and the Concurrent lists *via* the advice of the Council of Minister to the Governor, in exercise of those extraordinary powers which he is mandated to exercise without any reference to the Union Government or the President. It would, therefore, be reasonable to state that the matters pertaining to the Scheduled Areas referred to in sub-paragraph 5 (1), should be deemed to comprise matters in which the Governor need not seek advice of the Council of Ministers and should act in his discretion even though it is not expressly stated in the Fifth Schedule. If there are any lingering doubts on this vital issue concerning tribal affairs, it is the fittest case in which the Governor can and should use his discretion in terms of Article 163(2) which cannot be questioned by any authority whatsoever.

The Scheduled and Tribal Areas

Part X of the Constitution comprising originally a single Article, Article 244, concerns the Scheduled and Tribal Areas in the country. A formal distinction has been made in this Part between the Tribal Areas and the Scheduled Areas. The Tribal Areas have been defined under paragraph 20 of the Sixth Schedule as areas specified in the same Schedule pertaining to the States of Assam, Meghalaya, Tripura and Mizoram. The administration of the Scheduled Areas, on the other hand, has been covered under Article 244(1). It is subject to the provisions of the Fifth Schedule.

Moreover it relates to any State other than the States of Assam, Meghalaya, Tripura and Mizoram. The 'Scheduled Areas' have been formally defined in sub-paragraph 6 (1) of the Fifth Schedule as 'such areas as the President may be order declare to be Scheduled Areas.'

According to the original provision of sub-paragraph 6 (2) which was amended in 1976 (for detailed discussion refer to Chapter 4 below), it was envisaged that 'the President may at any time by order - (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (b) alter but only by way of ratification of boundaries, any Scheduled Area....; and (c) any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.'

The position about scheduling in this frame is quite clear. The scheduling of areas in any State is envisaged as one time activity. The President is the sole arbiter in this regard. Even the Parliament has no role to play. Once the President uses his discretion, rightly or wrongly, the situation freezes at that point. Neither the President, nor even the Parliament can add to the list of the Scheduled Areas so made. The President, however, can at any time by order direct that the whole or a part of the Scheduled Area may be removed from the Schedule or may be de-scheduled. This should be the natural course of events as the nation marched ahead in which the pace of advancement in some areas, such as the Scheduled Areas, has to be faster than others, so as to cover the initial gap between the two as early as possible.

Continuous Review and Periodic Assessment

With special provisions made for the Scheduled Areas and the clear objective of bridging the wide gap between the Scheduled Areas and the rest of the State in each case as expeditiously as possible, continuous vigil had to be an essential part of the Constitutional Schema itself. Moreover, the transition in the case of the Scheduled Areas, by its very nature, was bound to be an extremely intricate affair with pulls and counter-pulls of traditions and customs on the one hand and the processes of so called modernisation on the other. The legacy of the centralised imperial frame and the living tradition of virtual autonomy at the village level could not but add to the complexity of dissonant forces. A critical review of what was happening on the ground, therefore, has been built in the Constitutional frame itself. The Governor, as the prime mover in the case of the Schedule Areas, is charged with the responsibility of preparing a Report annually regarding the administration of the Scheduled Areas and submit the same to the President under paragraph (3) of the Fifth Schedule.

It may be noted here that the term 'administration' in this case has a much wider connotation compared to the general meaning of that term.

The Fifth Schedule itself deals with what has been termed as '*the Administration* and Control of Scheduled Areas and Scheduled Tribes.' It covers all affairs of the State pertaining to these areas including the entire gamut of legislation. The legislation itself has a clear focus, namely, 'peace and good government' as given in sub-paragraph (2) of paragraph 5. It is on the basis of this Report about administration of the Scheduled Areas submitted to the President the Union is expected to take stock of the situation thereof and act. It includes giving of directions to the States for which the executive power of the Union has been extended in the same paragraph.

Whatever may be the level and the nature of the Report on the administration, it is still an internal matter of the State. As we have discussed in detail earlier, the most serious issue in respect of the tribal people is protection against the State itself. Therefore, any internal mechanism, including the special responsibility bestowed on the President, the Union and the Governor, by its very nature, has serious limitations. The Constitution, therefore, envisaged appointment of a 'Special Officer for the Scheduled Castes and Scheduled Tribes' by the President under Article 338. The duty of the Special Officer (since replaced by a National Commission for Scheduled Castes and Scheduled Tribes- see below) were specified in the same Article as 'to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution.' It was also his duty to report directly to the President upon the working of the safeguards. It was further envisaged that 'the President shall cause all such Reports to be placed before each House of Parliament.'

The last in the series of provisions concerning reporting on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States is under Article 339 of the Constitution. The President may appoint a Commission to report in this matter at any time, as he may deem fit. While the appointment of a Commission under this Article in general is discretionary, the appointment of the First Commission at 'the expiration of ten years from the commencement of this Constitution' is mandatory. Accordingly a Commission was appointed in pursuance of the provisions of this Article in 1960 under the chairmanship of Shri U. N. Dhebar. It gave its report in 1962. (See Chapter 3 for details) No other Commission has been appointed so for under this Constitutional provision.

Scheduling of Tribes

'Who are the people who have been designated as 'Scheduled Tribes' in our Constitutions?' is the last question which we may briefly address ourselves now. There is a long drawn and continuing academic debate on this question in our country. It began with the question of classification of people in the decennial Census operations. That the people living in the hills and forests did not conform to the general pattern of classification based on caste and religion, was observed by many a Census Commissioners in different provinces. The problem got confounded because of the

nature of Hindu religion which accommodated vastly varying practices within its fold and which by its very nature was very loose. The peoples living in the forests and hills, who did not precisely conform to the sharp caste-religion classification, were variously described as 'hill tribes' or indigenous people. The vernacular terms like *Adivasi, Girijan* and *Vanvasi* have also been used.

While the debates on the religious beliefs as also the caste-tribe continuum continued, there was consensus about certain special features about the social and economic condition of the people living in hills and forests. *Firstly*, theirs is a simple social system with almost no hierarchy. *Secondly,* their economic system is simple and largely self-sufficient with almost no or minimal specialisation of functions. *Thirdly,* the basis of their economic life is the entire habitat, or a geographical area or a territory which the people consider as their *'des'*. There are deep religious, cultural and emotional ties of the people with their *des*. *Fourthly,* their life has remained largely exclusive with minimal contact with the outside world. In most cases each community has a language of its own.

But when we come to the question of formal classification of the Scheduled Tribes under the Constitution, what we find is a tautological proposition. The Scheduled Tribe is one which has been put in a Schedule for the concerned State by the President. According to Article 342(1), the President after consultation with the Governor of the concerned State may 'specify the tribes or tribal communities or parts of or groups within tribes or tribal communities' which shall be 'deemed to be Scheduled Tribes in relation to that State.'

There are two important points about scheduling of tribes. *Firstly,* the Constitution does not admit the concept of according the special status as Scheduled Tribe to a tribe or tribal community for the entire country. The existence of a tribe or a tribal community is a sociological phenomenon. A tribe or a tribal community may be spread over a large area covering many States, or it may be confined only to a small tract therein. According to the scheme of the Constitution a discriminating approach is to be adopted involving precise identification for the purposes of according the concerned groups special Constitutional status of a 'Scheduled Tribe'. In view of the fact that variation in the economic and also social situation amongst different groups belonging formally to the same tribe or tribal community can be quite large, it is necessary that this exercise is done in detail with concern and care for each State. Even in the same State, the economic and social situation of the concerned tribe or tribal community may not be the same and vary widely: It is, therefore, possible that a community may be accorded the said status only in a limited area in the State and not every where.

The other point is that it is not incumbent on the President to accord special status to an entire community even within a State. It is a well-known social and economic phenomenon that members of the same community may start from the same base, but the pace of advancement of different groups may be so different that in course of time they may virtually come to comprise distinct identifiable groups. Each one of these groups, therefore, may or may not need special dispensation. The decision of the President to specify some groups within the same tribe as Scheduled Tribe while leaving out the others, can be accepted as a normal feature of the Constitutional schema. However, such decisions must be relatable to the objective socioeconomic situation of a group and no other consideration whatsoever.

The fact that a group belongs to a certain tribe or a tribal community alone cannot entitle it to be included in the list of communities recognised as Scheduled Tribes notified by the President under Article 242(1), is basically an acknowledgement and also affirmation of the inherent dynamics of the social and economic life of the people. Moreover, the Constitution itself in a way comprises the people's resolve to create a new social order based on equity and equality. *The state of 'backwardness', if any, therefore, is deemed to be a transient phenomenon.* The scheduling of a tribe or a tribal community or a part thereof or a group therein on the basis of their social and economic situation had to be reviewed from time to time. The power to review the Order of the President specifying the tribes, etc., as Scheduled Tribes, however, vests in the Parliament under Article 242(2). Any variation in that list, by way of addition or deletion, can be effected only by a law passed by the Parliament. The Order of the President in respect of any State specifying the tribes, etc., as Scheduled Tribes is a one-time affair and no changes therein can be made by a subsequent notification by the President.

Summing up

The Fifth Schedule constitutes 'an integral scheme of the Constitution with direction, philosophy and anxiety to protect the tribes from expropriation.' Its objective is 'to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and political justice for preservation of peace and good government in the Scheduled Areas'.[12] All actions of the State must be in furtherance of the above Constitutional objective and dignity of persons belonging to the Scheduled Tribes, preserving the integrity of the Scheduled Areas and ensuring distributive justice as an integral scheme thereof. The executive in the name of the Governor stands vested with all the necessary powers, perhaps more, for achieving the aforesaid objectives.

Chapter 3

Confusion, Unconcern and Dereliction

Mist at the Dawn

The journey after independence began with the grand vision of a glorious future for the common man including the tribal people in a milieu of goodwill, faith and trust. There was built in caution for necessary correctives, should there be any deviance from the charted path. The entire edifice of the new System was, however, built on certain basic premises, not made explicit. *Firstly,* it was believed that the imperial administrative frame, which the nation had inherited, with a clear hierarchy of command and accountability, will serve as an efficient channel of communication between the people and the concerned authorities charged with special responsibilities. It was also taken for granted that it will function as an effective instrument for execution of decisions of the new leadership in the right spirit. Thus, it was presumed that neutrality will continue as the hallmark of its functioning, as in the past, in relation to (i) assessing the situation on the ground, (ii) reporting to the concerned authorities, and (iii) the execution of decisions at the top. *Secondly,* in the case of the tribal areas it was believed that the Tribes Advisory Council, comprising representatives of tribal people, will reflect the people's perception in all matters. Moreover, 'it will also be in a position to appreciate the nature of the interface between the people and the System. Therefore, it will be possible for the Governor, the central figure in tribal affairs, to draw upon the wisdom of the Council, should any question arise about the suitability, or otherwise, of any step of the government in general and in the course of framing of law for peace and good government in particular.'[8]

As we will presently see, both these premises did not hold good in the extremely complex socioeconomic and legal-administrative situation which was engendered after independence. Nay, the premises were rather flawed in the changed circumstances even on *a priori* considerations. Let us take the second premise first. The tribal representatives as also most other people, barring a few exceptions, even today are so simple that they really do not understand the real nature of even simple events around them. The complex world of law and the formal System are located at a much higher pedestal. They have their own mystique. It can be unravelled only by the 'high priests' of that System like *pundits* of the olden times *vis-a-vis* heavenly affairs. These 'priests' may prefer, on purpose, to present a partial, distorted or even an unreal picture before the people and their representatives. Moreover, there in no direct cause and effect relationship

in this complex web between what is done today and what one may encounter tomorrow. In this situation, it is almost impossible to know about the nature of omissions and commissions whose consequences people have to face in due course. The consultation with the Tribes Advisory Council, in this situation, in effect, was bound to get reduced to a mere ritual with no real significance, not to speak of the vital role envisaged for it under the Constitutional schema.

So far as the first premise is concerned, less said the better. The role-capability of the administration, with Governor in sole command as a Constitutional proposition, had two serious weak points. *Firstly,* could the administration continue to be neutral in the changing context after independence particularly in the tribal areas with a vast variety of forces let loose therein in the name of development? Could the administration be expected even to articulate the people's side which could form the basis of action at the higher level? Individuals apart, the administration was simply not designed to perform such a role. It is sad that the imperial frame, with an altogether different role-perception, was continued as it was without any serious consideration about the new role perspective. *Secondly,* let us consider the position of Governor himself. Could a Governor with all the handicaps mentioned earlier intervene in the interest of the tribal people on their behalf, even if he came to the conclusion that the general policies of the State designed for, may be, larger good, not to speak of the cases where they are tailored to benefit some interest group or the other, were not in the interest of the tribal people? Could he act on his own in his discretion, or was he obliged to abide by the advice of the Council of Ministers? That not a single case has come to the fore in the half century after independence in which a Governor may have felt like using his discretion in this spirit putting aside the advice of the Cabinet or may have referred some matter in case of doubt to the Tribes Advisory Council, speaks volumes about this premise.

The Nature of Transition not Really Appreciated

The confusion about the basic objectives and the roles of even Constitutional authorities arose and has continued ever since the adoption of the Constitution because the significance of implicit change in the objectives concerning the tribal areas and the tribal people with the dawn of independence was not fully realised. From 'leave them alone' model for peace and good government to 'guided change and planned development' model was a real quantum jump. The parameters of the two models are totally different. The basic premises and agenda for action, or one should say for non-action in the 'leave them alone' frame, were simple and unequivocal. The deviance, if any, from this 'objective' would become known both to the people and to the administration alike because almost instantaneous and spontaneous reaction could be expected particularly from the people's end. The genesis of the extraordinary powers of the

Governor was the deep concern of the *Raj* for peace in these territories, undisturbed unto eternity. On the other hand, perturbations in place of placid calm had to be accepted as a part of life when a process of transformation begins, irrespective of the nature of guidance and planning for change. The complex situation which would, thus, gets engendered has innumerable facets. Each one of them is amenable to widely different perceptions, all of which are valid in their respective frames. The people's reaction, which was the sole perception of 'leave them alone' frame earlier, in the new context became only one of the countless facets which could be dealt with in numerous ways depending on the sensitivity and the perception of the concerned or even 'unconcerned' decision-makers.

The approach in the new frame of change could be any thing from that of a stern school master, a concerned guardian onto a rationalist of the purest breed at the other end with firm faith in survival of the fittest. Any tragedy which may befall the tribal people in the course of change could be taken in its stride. One could reconcile, like a *smashan vairagyin*, with what is inevitable, with a deep sigh of compassion, 'what one can do, after all some one has to pay the price of development in the mad mad modern world'?

The quintessence of the pre-independence tribal scene can be said to comprise three basic elements -

(i) a system of self-governance guided by the traditions and customs of the people with almost no exotic intervention;

(ii) considered intervention at the highest level in matters concerning the System and the legal frame; and

(iii) realisation of the need for protection against the articulate neighbours and even the functionaries of the State exemplified by the 'excluded area' approach and even total ban on entry into the same through stringent innerline regulations.

The Fifth Schedule did have the potential of simulating the pre-independence frame. But it did not explicitly provide for effectively dealing with the dynamics of guided change and planned development. Moreover, the contingency of omissions and even dereliction on the part of those vested with authority and charged with the associated responsibility was not considered seriously. We may begin with the very first issue of self-governance which, in the case of tribal areas, has to be accepted as the central element.

Self-Governance at the Village-level

That community at the village level in the tribal areas is a functioning unit is universally acknowledged. That it has been managing its affairs in accordance with its customs and traditions effectively and that too in the spirit of a true democracy, is also beyond doubt. The ideal setting was succinctly described even after more than a decade of

independence by the Scheduled Areas and Scheduled Tribes Commission as in the following[13] :

> The decision of their Councils is law to the tribals. The sanction behind it is both necessity and faith; necessity because there in far flung areas social equilibrium and stability have to be maintained by some responsible agency and the Council is that agency; faith because with the tribals their social customs and religious rites are the essence of their existence.'

The principle of exclusion or non-regulation was the formal expression of this realisation by the *Raj.*

The policy to be pursued after independence was expressed most eloquently by Pandit Nehru in his famous *Panchasheel,* referred to earlier. It was accepted as the corner stone of State's policy on tribal affairs in that early phase. Even on the larger canvass of the national life, a republic-like system at the village level, simulating the village-republic of the hoary past, was accepted by the Founding Fathers and duly enshrined in the Constitution as Article 40. *Therefore, there could not be even an iota of doubt about the ideal and the objective for the tribal areas in respect of self-governance.* It had to be an integral part of any frame which might be designed for the tribal areas in general. That is not all. It had to be accepted as the firm foundation for building a new system with necessary scope for variations of design and detail depending on the local situation. Yet, no explicit provision was made either in the Fifth Schedule or even the Sixth Schedule to ensure that necessary space was created within the formal System for this living entity at the village level, the Village Council or the *Gram Sabha* and that the new edifice was built there on in real terms.

Sixth Schedule X-Rayed

The provisions of the Sixth Schedule, however, on careful examination, reveal the nature of prevailing confusion and ambivalence as also the yawning gap between the intension of the Founding Fathers and the hardware of democracy. The warning of Pandit Nehru[14] about the limitations of written words and terms and his plea for being guided by the spirit proved to be a mere palliative. For example, under paragraph 3 of the Sixth Schedule, it is the District Council or the Regional Council, as the case may be, which has been endowed with the necessary lawmaking powers concerning '(e) the establishment of village or town committees or councils and their powers' as also '(f) any other matter relating to village or town administration including village or town police and public health and sanitation.'

This provision in the Sixth Schedule, on the face of it, would appear to be unexceptionable. What we have here is an autonomous district or region. The governance of these autonomous units is in the hands of the Autonomous District Councils or the Autonomous Regional Councils

therein, as the case may be. The Autonomous District/Regional Council is constituted under paragraph 2. It can comprise not more than thirty members. All members thereof 'shall be elected on the basis of adult suffrage', except those nominated by the Governor, whose number cannot be more than four. Thus, the norms of representative democracy are largely honoured.

It is, however, important to note that what we have here is a transformation from the traditional system to the formal system. In this case the transformation on the face of it is not arbitrary or just superimposed. It is envisaged to be effected through a process of consultation with the traditional system by the Governor. The 'rules for the *first constitution* of District Councils and Regional Councils' shall be made under sub-paragraph (6) of paragraph 2 by the Governor 'in consultation with the *existing tribal councils* or other representative tribal organisations within the autonomous districts or regions concerned'. The traditional councils can be said to have been given due honour. These rules cover, *inter alia,* the composition of the District Councils, matters concerning elections and conduct of business. The District or the Regional Council, after its first constitution, may make rules on the said subject under sub-paragraph (7) with the approval of Governor.

Here is the real twist which perhaps went unnoticed in the flurry of freedom and euphoria of democracy. The democracy after independence in general got equated with 'representative democracy' in a meticulously defined frame reduced to writing in the form of laws and rules made thereunder. It was a great event for the nation as a whole which had carried the imperial yoke for more than a century. But the full significance of the traditions and customs in the system of self-governance at the village level particularly in the tribal areas was not fully appreciated even though they have to be accepted as an integral part of the frame of law in a truly democratic polity as discussed earlier.

Implications of Formalisation

This vital omission and confusion would need a detailed analysis. The Constitution in the Sixth Schedule envisaged replacement of the traditional institutions of self-governance, which had retained full autonomy in these tracts by virtue of non-regulation or exclusion thereof, by a set of formal institutions. There are many facets of such a transformation. *Firstly,* let us consider the scope of the two sets of institutions, the traditional and the formal. The scope of the new formal Councils is set out in paragraph 7. It comprises almost all affairs concerning the day-to-day life of the people such as management of resources, *albeit*, excluding reserved forests, civil administration and social matters like marriage and divorce. Nevertheless the fact remains that the scope of the powers of the new Councils is *prescribed and definitive;* it is not open-ended. All that is not enumerated in this paragraph is deemed to vest with the State.

It is not the other way round, as should be expected as natural in a true democracy. In the case of a true democracy certain specific aspects can be taken over by the State, whose number has to be kept at the bare minimum leaving the rest to be handled by the people as per their traditions and customs. This is the frame which was actually in vogue in the excluded areas before independence.

Secondly comes the question about the way even the matters enumerated in paragraph 7 of the Sixth Schedule are to be handled in the new situation. The last arbiter in matters concerning the traditions and customs of a people naturally is the community. As noted earlier, it is the dynamics of *parampara* which has been the moving spirit of the grand procession of all cultures and civilisations until the onset of the modern State. But now in the new frame, a formal institution has been endowed with the responsibility as also the authority to settle the parameters of governance in all those matters which had been governed by the *parampara* of the people earlier. *What is crucial in this change is the implicit premise that the parameters of governance of the community in the specified matters can be settled by a body other than the traditional institutions of the people.*

The scope of this change itself in practice can be highly variable. At the one end, the new formal authority can even decide that all matters concerning the specified matters will continue to be dealt with by the traditional institutions in accordance with their traditions and customs. This will be a 'no-change' scenario even after the formal System takes over from the traditional. At the other end of the spectrum, a situation can be visualised in which every aspect of the people's life gets formally defined by law, leaving no scope for the vicissitudes of the so-called people's autarchy under the name of *parampara.*

Even those who swear by traditions and customs of the people sometimes talk about codifying the same. They hardly realise the serious implications of such a proposition. The first point in the above proposition is about the scope of the proposition, that is, 'what and whose traditions and customs are to be codified?'. The traditions and customs are so variable over space and time that by the time one reaches the other end of the spatial spectrum of a tribal tract the situation may be totally different even though the continuum from one end to the other may be faultless, unbroken. Any codification of customs of a people, therefore, has to be an exercise in generalities. Significant variation of the codified version from the reality, particularly in respect of the smaller sections of a community, is inevitable in this process. Moreover, codification of customs, by itself, would bring about a total change in the nature of ultimate authority in matters concerning the traditions and the customs of a people. After codification the concerned community or group is no longer the last arbiter about what its custom is. A book may be flung in the face of the most revered persons, genuinely accepted by the people as their wise

leaders, on questions of social norms and traditions, by a zealot, not always moved by honourable considerations. The bewildered community may have no answer except that they may decide to burn the book, chastise the zealot and revolt against the System, which may be forced on them with best intentions without realising its implications, a recurrent phenomenon in the living tribal societies.

The irony is that in this formal setting, on the one hand, the community loses the natural endowment concerning self-governance even in that limited prescriptive frame. There is no gain on the other side either. Even the new institutions are not really autonomous as their name would feign to suggest. Not only the laws on the specified items, but even the rules governing the constitution of these formal institutions and the rules of game for their own working, are beyond their competence which they themselves cannot finally decide. In the instant case of the Sixth Schedule these rules have to be approved by the Governor. In fact, thus, what we have is the *'end of autonomy'*; there is not real autonomy by any stretch of imagination in the new frame, as the name would suggest.

Territorial Jurisdiction

The next question is about the geographical expanse of the jurisdiction of the formal institutions established under the provisions of the Sixth Schedule. Those institutions become the formal centres of powers and responsibilities. The tribal communities are generally associated with a territory over which each community, or part thereof, has been exercising effective command. Therefore, *the self-governing system not only relates to a community or a part there of but also to a territory or a part there of. Particularisation, not generalisation, is the guiding principle of the Constitutional schema of administration concerning the tribal areas and the tribal people.* The Constitution envisages district as the unit for the new System. There is no formal definition of district. It can be as large as a State, it could as well be a small tract comprising a few hundred villages. That a district may not comprise the same tribe all through and it may be necessary to carve out a smaller tract therein for other social groups has been incorporated as a part of the Sixth Schedule Schema itself. A district can have one or more regions within its geographical jurisdiction, which may be as autonomous as the district itself with reference to the entire canvass of autonomy discussed in detail above.

Again, this formal frame of the Constitution in principle may be considered as adequate to accommodate all geographical areas related to each tribe or a part thereof as a separate unit, that is, as a district or one or more regions therein, as the case may be. Nevertheless the fact remains that the process of delimitation in this case is formal and proceeds from above. Therefore, it is bound to be influenced, if not governed, by considerations of formal administration. The possibility of each tribe, or part there of, being accommodated in this formal process as per the people's

perception and their sensitivity is rather small and unpredictable.

To the extent there is dissonance on this count, the organic and dynamic character of the community will stand undermined. It would give way to formal processes which have their own dynamics. The most ominous aspect of the new dynamics is the disregard for the community and ascendency of countless vested interests which enter these areas under the cover of the formal frame which the people are unable to understand.

To cap it all, like all other formal structures in a democratic polity, the new Councils comprise people's representatives chosen by them on the basis of adult suffrage. Besides the issues of delimitation of constituencies, which of necessity have to follow a number norm, and not societal zones, this System has the inevitable implication, that is, installation of the principle of vote, or the number game, at the centre of the stage. The serious implications of this proposition, which not only look so simple but even natural in a democratic polity, were never made explicit, nay not even considered in any detail in respect of the traditional community organisation of the tribal people.

The formal system basically accepts 'the atomised and inorganic view of society'. The tribal system, on the other hand, is built on the foundation of community life. The essence of community life is complementarity of roles of all its members, ideally set in a frame dedicated to lasting harmony. 'The community can never be at war with itself : one part of it fighting the other (*albeit* democratically), and the majority ruling over the minority. Nevertheless this issue was not faced squarely after independence even as a general proposition, not to speak about the tribal situation. There was no doubt an uneasy feeling about something going wrong amongst sensitive leaders like Jawaharlal. Yet, their search for the missing key remained confined to the lighted area of formal institutions in total disregard of the vast expanse of traditional system, simply because it was dark over there.

The Scheduled Areas and Scheduled Tribes Commission, comprising persons deeply concerned with tribal affairs, did pose a decade later some important questions in clear terms such as[15] 'Is the principle of election to Tribal Council contrary to tribal tradition?' 'Will the elective principle enunciated for statutory Panchayats create any rivalry or jealousy in the tribal villages, so as to disrupt the existing cooperative feeling amongst them?'. The Commission after due consideration did take a categorical stand about the existing traditional Councils. They should continue in all homogeneous tribal areas where they are strong and alive. It was also clearly stated[16] that 'it will not be necessary to introduce new statutory Panchayats in such places'. *But the Commission failed to take note of the negation of this principle in the scheme of the Sixth Schedule itself with built in transformation from the traditional to the formal in the form of Autonomous Councils for the district or the region, as the case may be.*

The most anomalous, nay, unseemly and indecorous aspect of this

transformation in the Sixth Schedule was that it was to be done 'in consultation with the existing tribal councils'. The judgement had been passed by the August Assembly. The existing tribal councils enjoying allegiance of the people had to go. They had to give way to the Autonomous Councils established under the authority of the Constitution. The new Councils were also vested with necessary powers there under. This fiat was reminiscent of the supersession of the traditional village system in the country as a whole in the beginning of the British Rule, but with a difference. The insolent rulers then did not even take a formal note of the *'being'* of the community except in tribal tracts where they faced revolts and rebellions. The supersession of the community in that situation was unilateral. It became effective on the dot with the enforcement of concerned laws. In the new setting after independence, however, perhaps in deference to the spirit of democracy, the *being* of the tribal councils was recognised. They were also given the honour of being consulted by the high priest of the new System, the Governor himself. They could perhaps express their wish about the way their *Last Rites* were to be performed. But the Judgement about their virtual dissolution itself was final. That was to be an act of self sacrifice on the alter of democracy in fulfilment of the dreams of countless millions. Could there really be any case for a choice?

Village Councils Remain Supreme

The Autonomous Councils have been established in the North-East in accordance with the provisions of the Sixth Schedule. It was presumably done in consultation with the existing tribal councils. It is a moot question whether the people who were consulted really knew what they were being consulted about. In their perception that exercise may have been one more ritual like a series of other rituals relating to some events up there which were really beyond their comprehension and, therefore, of no real concern to them. All they could have imagined was the fact that there was a Parliament; there was an Assembly; so here was one more body to be known as Autonomous District Council, all of the same mould. In their perception, so far as their day-to-day life was concerned, there could be no change unless they themselves decided about the same. They had resisted all sorts of attempted intrusions even by the most powerful Empire successfully for more than a century. Therefore, there was no reason for them to visualise any change to their disadvantage now particularly when the overbearing white man had disappeared from the scene. Their own representatives, irrespective of their positions up there, be it the Parliament, the Assembly or the District Council, could have no special position back home in *their* System which was governed by *their* customs and *their* traditions. There was no place for any exotic intervention irrespective of the genus to which it belonged.

The inevitable result was that the Autonomous Councils in the Tribal Areas governed by the Sixth Schedule largely remained irrelevant so far as the people are concerned. They were visualised by the people as a part

of that State whose jurisdiction was not extended to these areas earlier by virtue of 'non-regulation' or 'exclusion'. Any activity which went against the well-established customs and traditions of the people, be it management of resources, or raising of taxes, by the State or the Autonomous District Council, was deemed as an uncalled for intrusion. It was successfully resisted without much effort through the sheer inertia of their living tradition. The exotic bodies including the State and the District Council could, however, operate in those aspects which, in the perception of the traditional society, were till then no-man's land like education or health services. The provisions of the Sixth Schedule, therefore, have remained largely unoperational as no one could dare to intrude into the jurisdiction of the traditional Councils, not to speak of challenging their authority.

This situation has particularly prevailed in matters concerning the village system which was functioning like a republic. The irony is that under paragraph 3, the Autonomous District/Regional Council has been vested with all powers concerning Village Councils including their establishment, functions and powers. These Councils at the district or regional level in general, however, could not acquire legitimacy in the people's perception. Therefore, *their formal powers remained irrelevant in relation to that system at the village level which is rooted in the traditions and customs of the people with unwavering allegiance on their part.* In fact, these 'irrelevant', 'autonomous' institutions proved to be a boon in disguise for the traditional Village Councils. Eventhough the formal jurisdiction concerning Village Councils is vested with the Autonomous District Councils, they had little time or energy to attend to that side. They remained engrossed, like the Panchayat Raj Institutions elsewhere, in their dealings with the State Governments, that too mostly concerning the so-called developmental activities. These activities do not comprise the real hard core of self-governance particularly in the tribal areas with a self-sufficient economy amidst rich natural resources.

Thus, in the Sixth Schedule areas, the traditional system of self-governance at the village level has remained, more or less, intact after independence. The scheme of transformation from the traditional to the formal system described as autonomous, proved to be cosmetic. It could not affect the traditional system. Rather, the weak formal structure of Autonomous District Councils provided immunity to the traditional System against the possible intervention from the more powerful forces which could emanate from the laws enacted by the State Legislatures or the Parliament.

The Fifth Schedule Areas

The special provisions for the administration of the Scheduled Areas in the Fifth Schedule are not as elaborate as in the Sixth Schedule. They are brief and simple. Their scope, however, is boundless. There is no reference therein to the traditional Councils. Nor is there any mention about

the prevailing systems at the village level. Therefore, in what way the traditional system was to be used and, wherever necessary, suitably moulded, after the Constitution came into force was left to be decided by the concerned authorities in accordance with the provisions of that Schedule.

As discussed earlier, the Governor is construed as *the Legislature* for the Scheduled Areas with powers to amend any law of the Centre or the State on any subject, cutting through the three lists in the Seventh Schedule as also to make suitable regulations for peace and good government in those areas. This comprehensive frame, however, is seriously flawed on one count. All laws of the State or the Centre on any subject as per these provisions automatically cover, as the case may be, the entire State or the entire country including the Scheduled Areas. The Governor *does* have the power to amend these laws or even make them inapplicable to the Scheduled Areas, should he so desire. Such an intervention presumes that there is a mechanism at the command of the Governor for continuous review of the suitability or otherwise of every law enacted by the State Legislature and the Parliament. As we will see presently, no one cared to attune the existing institutions or create new institutions for assuming this responsibility. The simple result is that no Governor ever intervened. It rendered the powerful and comprehensive provisions of the Fifth Schedule inconsequential, if not a nullity.

So far as the System at the village level is concerned, the Guiding Principles of State Policy have been set out in Article 40 of the Constitution referred to earlier. It is an irony of history that this Solemn Resolve of the Founding Fathers, which envisaged establishment of a vibrant functioning republic for every village as the ideal, got transmuted into a ritual of setting up lifeless *sarkari* panchayats comprising elected *panchas* and *sarpanchas*. The term *panchayat,* which in common parlance stands for the general assembly in the village and was accepted in that spirit by the Constituent Assembly in its debates, was give the legal form of an elected body of that nomenclature. The organic village-community, thus, remained outside the legal frame of *panchayats* established even after coming into force of the Constitution. As we will discuss in detail later, even after the collectivity of people was recognised in the form of *Gram Sabha*, it remained devoid of any powers. Even the Seventy-third Amendment which enshrined *Gram Sabha* in the Constitution did not make much of a difference in this regard. Article 243A envisages-

> A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

None of the State Legislatures in the entire country deemed it necessary to bestow any powers whatsoever on the *Gram Sabha* in the laws enacted by them for updating the prevailing laws in the light of the said amendment.[17] The role of *Gram Sabha* has been envisaged largely as a deliberative body whose recommendations may be considered by the

concerned *panchayat.* We will be discussing subsequent developments in this regard in detail later. However the fact remains that the opportunity for restoring the system of self-government at the village-level in the entire country after independence, emulating the hoary tradition of village-republics, was missed notwithstanding the Directive Principles of State Policy to that effect in the Constitution.

The issue in the case of the Scheduled Areas, however, was totally different. In their case, it was not a question of 'restoration' of a system demolished by the Raj. The real task was for providing space in the legal frame for what was already existing as a living tradition of self-governance. It remained protected to a large extent through 'non-regulation' and 'exclusion' during the earlier period. It was unfortunate that the general laws of all States framed after independence were uniformly applied to the entire territory of the concerned States with no special provisions for the Scheduled Areas. There were, however, just a few rare exceptions. For example, in Bastar special *adivasi panchayats* were constituted during sixties. However these Panchayats disappeared after some time since no one bothered about them.

One common feature of all laws concerning Panchayats was that all of them without exception ignored the very existence of the functioning traditional councils at the village and at the group of village levels. As stated earlier, the successors of the Raj after independence re-enacted the old scene after about a century in the Scheduled Areas which the founders of the Raj had enacted earlier elsewhere in the very beginning. They demolished the living tradition of self-governance at the village-level bit by bit mercilessly with the super-imposition of exotic laws and alien institutions. The Governors, who should have exercised the necessary vigil in this regard and suitably adapted the laws, remained perhaps oblivious about the nature of change which was being forced on the tribal people. A parallel structure of statutory Panchayats was established with altogether different ways and values disregarding the ground reality. It had different consequences in different areas depending on the local situation.

The Dhebar Commission, while reviewing the state of traditional Councils, a decade later, observed[18] that 'it may be said that throughout the whole of tribal India every substantial village has some kind of machinery for settlement of social and religious disputes. Sometimes this machinery has grown a little rusty and it may be difficult to start it working again with full efficiency.' In the North-East, however, as alluded earlier, the tribal Councils were powerful and 'working with considerable success both in development and judicial fields.' The Commission recommended exemption of specific homogeneous Tribal Areas as in the North-East from the operation of the general *panchayat* laws. They further recommended transfer of all powers of statutory *panchayats* to the traditional Councils.

In the case of other tribal areas also, the Commission did realise that 'if the traditional councils are weakened, the fabric of tribal life will also be weakened.' But they did not take the bold stand as for the homogeneous

tribal areas. Instead, the Commission suggested[19] a dual system in which 'the traditional councils will be concerned mainly with social and religious matters and the Statutory Panchayat, which are predominantly political organisations, with administration and development'. The Commission, however, suggested[20] that 'the programmes of development should be prepared by the statutory *panchayats* in consultation with the tribal Councils. This will ensure that the tribal Councils will lend their full weight in furthering the objectives of development'. Moreover, 'they should be encouraged to settle village and inter-village disputes without having resort to the ordinary courts.'

These recommendations of the Commission bring to the fore the prevailing confusion and ambivalence about life in the village amongst the ruling elite including even social workers who may have dedicated their life for their enlightenment and advancement. That the Solemn Resolve of the Founding Fathers concerning republic-like *panchayats* in general in this milieu came to naught, should not be surprising. That the Governors amidst their multifarious activities did not realise the gravity of their responsibility specially cast on them by the Constitution and tribal people suffered on account of that omission, is unfortunate. It can be ascribed to the milieu of great hope and optimism that prevailed during that period. 'These are initial problems which will be sorted out in due course', was the general belief.

Such a belief in the flurry of post-independent developments in general is understandable. But here was a Constitutional Commission which was charged with the responsibility to investigate what was happening in the tribal areas. This Commission was aware about the strength of the traditional institutions. The Commission eulogised[21] the Indian society for its functioning 'on the basis of an integrated approach to all the problems of life, never taking an extreme position.' Yet the same Commission was oblivious about the internal contradictions of the dual structure which it recommended for the simple tribal people, and also its long term implications.

The holistic frame of a living community, particularly of the simple tribal people, was not amenable to the proposed division between what were termed as 'social and religious' aspects on the one hand and 'administration and development' on the other. Moreover, the proposed division would necessarily imply dualistic accountability. The traditional council is unequivocally answerable to the people, while the statutory body would owe its allegiance at least to its creator, if no one else, that is, the State. The basic premises governing the two sets of institutions and their respective functions, by their very nature, are different. The formal segment would presume atomised existence of the people living in a village while the traditional segment has to be rooted in the community. The Commission also failed to realise that once dispute resolution, which is the first essential condition of real community life, is not within the purview of the community

and gets assigned formally to exotic institutions like the police and the courts, no amount of *'encouragement'* for their resolution within the community as suggested would do. *Once the formal authority for dispute resolution is outside the community, its disruption, atomisation and decay are only matters of time.*

In sum, the specific provision under Article 40 concerning self-government at the village level and the comprehensive provisions of the Fifth Schedule which could be used to create necessary space in the formal System with fullest scope for functioning of the traditional system of self-governance, were not really used. Not only the Governors, but even the Scheduled Areas and Scheduled Tribes Commission, miserably failed in appreciation of the significance of the traditional system of self-governance amongst the tribal people which had survived through the ravages of the Raj. Confusion prevailed in these areas largely because even the existence of the traditional institutions was ignored and all sorts of exotic formal institutions flooded the tribal areas. The community faced the onslaught valiantly for some time, even rejecting in toto the exotic system in some cases. This led to the most unenviable situation where the people were pitched against the State, which under the Constitution has been charged with the special responsibility of protecting the tribal people and their interests. The fact that the executive heads, that is, the Governor and the President, have been clothed with the most extraordinary and unlimited powers for achieving that objective, of a virtual dictator within the frame of a democracy under the Fifth Schedule, made no difference. 'It is a sad and inexcusable lapse', can be the softest commentary on this long graceless episode.

Unconcern Right Through, Unto the Top

The state of confrontation between the people and the State in the tribal areas needs some explanation and also elaboration. Once the self-governing system with traditions and customs as its sole reference frame was disregarded, sentimental eulogisation at all levels notwithstanding. What we have is a virtual free-for-all scenario in the tribal areas. It may be remembered that similar situation prevailed a century earlier in the rest of the country after the Raj started ravaging the self-governing system of traditional *panchayats*. The rack and ruin of village India was made absolute then with the implicit proclamation of State's *Eminent Domain.* It was given expression in the form of a bevy of laws which regulated all aspects of people's life to the total exclusion or even negation of the community. This was a totally new experience for a country which had retained the tradition of community's command over natural resources untouched. In fact, Marx and Angeles themselves had expressed their surprise about the Indian System by asking a question 'how does it come about that the orientals do not arrive at landed property even in its feudal form?' In 'Capital', Marx hailed[22] the fact that 'the extremely ancient Indian

communities are based on possession in common of the land, on the blending of agriculture and handicraft, and on an unalterable division of labour'. It was the vibrant village-republics with community as the strong foundation which sustained the Indian civilization through the ages. With the weakening of the community, through the simple and slimy device of it's exclusion and negation, that grand tradition got dissipated in less than a century in the face of relentless individualism and omnipotent State.

The same very process was let loose in the tribal areas ironically after independence with the innocuous looking extension of the formal system. The virtual exclusion and negation of the community was a necessary concomitant. There was no conscious decision about this exclusion and negation; nor were its implications ever made explicit at any stage. *This catastrophe just flowed from the Constitution, as an aside of democratic polity.* The irony is that the Constitution has implicitly reposed full faith in the System which, however, was supposed to be specially designed for these areas. But alas! there is not even an allusion about similar unequivocal trust in the people who had successfully defied the alien onslaught and defended their traditions and their identity during those dark days.

The homilies about community and tradition in the debates of the Constituent Assembly melted in the thin air. The fate of the people was left to be determined by the minions and the *pundits* of the System with reference to the words and terms used in the relevant formulations, which sadly proved totally inadequate as conveyors of the spirit behind them. So what we witness in the tribal areas is the telescoping of the century long process of the breaking of community elsewhere into decades and years. The command over the tract, including the resources on which the community subsisted, waned under the dark shadow of *Eminent Domain* of the State, rendering people defenceless. The individuals comprising the community were left to fend for themselves with whatever was recorded in their names by the minions. Other claims, if any, had to be established in accordance with the law and rules made thereunder about which they knew nothing and that too in Courts of Law with strange ways of 'manufacturing' and establishing truth.

The grand design of the Fifth Schedule got reduced to a sort of fire fighting operation, grappling with the tragedy forced on the people after the disaster. Any such task, by its very nature, would be impossible to achieve. In the instant case the very rules of game are determined, designed and played about by the very same other side, against which the tribal people are pitched to fight. The main objective of the legislative action under the Fifth Schedule, peace and good government, was not even noted carefully, nay, was totally forgotten. All eyes were set only on two of the three mere illustrations in paragraph 5, namely, land alienation and indebtedness. All authorities continued to fiddle with these problems. They tried one rule after another and one law after another to give the desired protection. But the whole exercise became a ritual as no one dared, or even

cared, to strike at the root-causes, such as omnipotence of the State, negation of self-governance and the community and, last but not the least, the stranglehold of exotic laws and institutions basically inimical to the interests of the tribal people, at least in practice if not in their very design.

The trivialisation of the State's responsibility concerning the Scheduled Areas and the Scheduled Tribes did not end with the ritualistic rule-making relating to land alienation and debt. No one cared even to spell out what 'peace and good government' in the context of the tribal people should be deemed to comprise. In fact, the same callousness on the part of ruling elite has been the order of the day in relation to all issues concerning ordinary people. A question like, 'what are the basic ingredients of self-government at the level of primary community in the village, the ultimate building block of the national polity?' has failed to engage, in the long half-century after independence, the attention of our elite of all descriptions, intellectuals, academic and political parties/leaders included.

In the absence of a clear objective and well-designed parameters for assessing the field situation and realistic feedback to the Governor, the Report of the Governor to the President, which is central in the design of the Fifth Schedule and its effective functioning, got reduced to a formality and a ritual. Accordingly, as observed[23] by Dhebar Commission a decade later, 'the State Governments have come to look upon them (Governor's Reports) as departmental reports, prepared mostly in a mechanical way as a routine chore.' The description remains true to this date.

The Special Officer

Even the performance of the Special Officer appointed specially for reporting independently to the President under Article 338 of the Constitution, did not warrant much to commend. In the first instance there was confusion about his role and the way he was to discharge his responsibilities. The result was ritualistic presentation of Reports of the Special Officer to the President which were placed before the Parliament in a routine fashion. In these Reports, substance got lost in a forest of detail. The matters did not improve even in the later decades as Reports of the Commissioner gathered dust on the tables of both the Houses Parliament for years together. The 'action taken' by government is[24] at best a 'game of *hide and seek,* played behind the curtain in the powerful Central Ministries.' The matter ends with colourless debates within stringent time limits in the busy schedule of both the Houses, busy mostly in trivialities of the hour. Less said the better about the quality of that half day debate after a lapse of five years on, may be, five tomes in one go. What we have there is a real life drama which can best be described as THE BETRAYAL OF BETRAYED'. [25]The saddest part is that this realisation has gone unalluded even in what are claimed to be concerned quarters.

When the author, after getting deeply concerned about the non-action

by the Government on issues concerning grave violations of the Constitution by the State particularly in relation to the tribal affairs, specially brought out in the Reports to the President, in his capacity as Special Officer, moved the Hon'ble Supreme Court in a Writ, the Government did not hesitate in taking adversorial stand in a routine fashion without any qualms of conscience. The Government also proceeded in a routine way in filing a Counter Affidavit contesting the findings of the Commissioner on *the basis of records available with the Government.* On a point of order about the incongruity of the situation in which the findings of the Commissioner based on his personal observations being rebutted by the Government on the basis of records, which in effect were challenged by the Commissioner in due discharge of his Constitutional responsibility, the question arose about the way the Government should present its side. The natural answer was that findings based on experience cannot be rebutted in any way other than by personal experience of some one representing the other side. 'Where can you find a person in the Government of India who can testify against the findings of the Commissioner on the basis of his personal experience?', observed the Hon'ble Chief Justice. 'Is it not the worst condemnation of the System which has been charged with the ultimate responsibility for protecting the interests of the tribal people and also for their advancement?' was the simple question which answered all questions raised therein.

This narration relates to the year 1990, forty years after the coming into force of the Constitution. The Fifth Schedule has remained ornamental practically serving no purpose whatsoever, except by way of performing occasional rituals referred to earlier.

Conflicting Roles of the State

The tragedy is that the State has continued to neglect its vital role concerning protection and welfare of the tribal people. It did not even care to ensure that there was regular feed back about the condition of the tribal people and that there was effective intervention by the designated authorities, should something wrong get reported. Yet the State became over active in its other role which the leaders had decided to pursue in the so-called national interest. Planned economic development with industrial sector in the lead was adopted as a national policy. This policy brought about a sea-change in the place of the remote tribal and forest tracts in the national matrix of economic development. India before independence was a predominantly agricultural economy. It served as a source of raw materials including agricultural products for the growing industries in the United Kingdom. The tribal areas in the economic system of that age were on the margin. They did not have many resources of much 'use' at that stage of our economy. Therefore they could be allowed to remain undisturbed through 'non-regulation' and 'exclusion'. The primary responsibility of the then government in that phase, therefore, was to

protect the simple tribal people, who were located on the margin of the social system and subsisted at a different stage of economy, pre-agricultural or at best 'primitive' agriculture, compared to their neighbours, who could be selfish to the extent of becoming predatory. The crucial areas of protection, therefore, were land alienation, indebtedness and market. They were specifically mentioned as illustrations and taken care of in paragraph 5 dealing with peace and good government in the Fifth Schedule.

The likely change in the scenario, which we are discussing, could not be visualised at that time. In fact, this omission was not only in respect of tribal areas alone. There is no mention in the Constitution about State's role in economic development of the country except in terms of the Guiding Principles of State Policy. The Planning Commission, which acquired a central position in the very first decade after independence, has no place in the Constitution. It was established by a simple resolution of the Union Government. It does not have a statutory base even till today. This illustrates how power can get engendered if the responsibilities assigned are seriously pursued and there is consensus about pursuing the given objectives seriously. This stands out in contrast to what has happened so far in relation to the Scheduled Areas and the Scheduled Tribes. The powers of the executive in their case are boundless. Yet the associated responsibilities got trivialised on account of unconcern and even studied silence in pursuance of other roles unmindful of what could be termed as 'criminal negligence of Constitutional obligations'.

Be it as it may. The tribal areas with rich natural resources, forest, water and minerals uncountable, which are needed for industrialisation, gradually acquired centrality in the emerging national economic matrix. The result was that the prevailing harmonious frame of *'marginal areas and marginal people'* got disturbed. The tribal areas, one by one, have been drawn into the whirl of change while the tribal people there remained on the margin of the economic system. *The ordinary tribal is deemed to be an unwanted burden sitting tight an the rich treasure underneath like a black cobra with raised hood.* Ironically in this case, since the State has assumed leading role in national development, the State itself became an interested party *vis-a-vis* the people whose protection and advancement are its Constitutional responsibility, with extraordinary powers placed in the hands of the executive with no one to question. *Thus, the tribal people in the changing national economic scene not only need protection against their neighbours who have been acquiring new allies but against the State and the growing army of its wily minions who have been descending on these areas like swarms of locust in the name of development.*

As planned economic development acquired the aura of inevitability, it was accepted as a process that could not be checked; it had to proceed according to its logic. In this frame, the premises like 'some one necessarily paying for the cost of development' and 'can the tribal people be left alone

in their own interest?' acquired currency, with no serious deliberation about their validity, let alone their desirability. A state of supercilious unconcern prevailed. The obsession with development and the associated compromise of tribal interests in the name of that divine grace, did not even spare the deliberations and the considered views of the Dhebar Commission.

While dwelling on communications the Commission had observed[26] —

> It is possible that communications may not always prove a blessing. They can, for example, facilitate the entry of exploiters and other harmful elements before the tribals become sufficiently conscious to look after their own interests. This is true. *But the benefits outweigh the dangers.* The march of events is fast. The needs of frontier defence, of industrialisation, of mining and development of every kind are compelling. *There is really no controversy here for everyone is agreed that we must go ahead, but keeping the tribal needs in mind.* (Emphasis added).

In conclusion, the Commission observed[27] —

> 'Development of communications will provide greater opportunity for the tribal to develop his national consciousness. He is essentially a rural entity. The village is the 'be all and end all' of his existence. *On no account he should be drawn away from his native soil to hold out a morbid picture of uprooted humanity.* Development programmes aimed at his all-round progress, including communications, should start with the village as the centre. Roads should be expanded; posts, telegraphs and telephones be increased; even air communication should be established. In phasing this programme, priority should be given to the most urgent and daily needs of the tribal people'.

While discussing on the impact of industrialisation, in whose service communications were to be pressed, notwithstanding the homage to 'the most urgent and daily needs of the tribal people, the Commission did place on record the possible risks. But there was no choice, conceded the Commission —

> 'Industrial development has its impact on the individual, the family, the society and on the entire environment. This impact has psychological, social and economic consequence.'[28]

The Commission regretted that 'the problem has not been viewed in this broader light yet'. However, they were enthusiastic and reassured in their formulations[29]—

> 'We expect that the States *as trustees of the tribal communities* will take up the matter. *While it would not be fair to expect them to halt the march of industrialisation,* there is a consequential obligation to the tribal to see that the process of industrialisation does not sweep

them off their feet. It is in this context that we have accepted Gandhiji's approach as the basis of our views. He did not want the tribals or anyone to remain in a prison house. He wanted the doors and windows of these houses to remain always open. But at the same time he wanted the foundations of their houses to remain secure. We have to see that the foundations of tribal life are not shaken and the house does not crash. We have no doubt that it is possible to devise ways and means by which, on the one side, industrialisation can proceed unabated and, on the other, the tribals can be enabled to build on their moorings and secure the utmost advantage out of the new wealth-creating machines that have entered these areas'.

This grand design in operational terms ended up with the usual routine recommendations like need for scientific research, integration of rehabilitation with projects, rehabilitation on land, amenities in colonies and preference in employment. The basic issue about the foundations of tribal life not being shaken and the house itself not getting crashed remained hanging in the air.

The Commission in fact failed to take note of the people's side. They did not care to see that the first reaction of the tribal people, for example, in Bastar as late as seventies on the eventuality of a new road passing by, was to move away into the cosy comfort and effective protection of their beloved forest. Similarly the valiant struggles of people against the assault of State under the cover of industrialisation, which needed no study, let alone scientific study, went unheeded. In fact, whatever support in the form of the great potentiality of the Fifth Schedule, which was available to the people, itself got jeopardised by the well-wishers of the tribal people.

The Flawed First Steps

(i) Scheduling of Tribes

The unconcern, which was callous in many cases, was writ large in the very first act on the part of the States and the Union about scheduling of areas and scheduling of tribes. We may begin with the scheduling of tribes about which some care was taken because of the simple fact that it had political overtones through reservations in elected bodies. The implications of positive discrimination, first in the area of public services and later in the field of economic development, could catch the imagination of concerned people only much later.

There was reasonable ground work in respect of identification of the tribes and the tribal communities, thanks to the census operations every ten years beginning in the mid-nineteenth century. The meticulous work done by many Census Commissioners in the Provinces, as also in the Centre was monumental and remains unmatched to this date. There were, however, some omissions largely unintended, borne out of ignorance about some small groups or communities on the margin in the context of the

complex Indian social system. The caste-tribe continuum does not admit any sharp lines in between. Nevertheless there were some cases of favours and prejudices as also political intervention in the matter of scheduling. They proved to be catastrophic for the concerned communities on the one hand and led to cornering of benefits by some comparatively advanced groups on the other hand leading to acrimony and infights. The worst case relates to the neglect and misclassification of those tribal communities, whose identity as tribals was beyond doubt and whose tracts were treated as 'excluded' earlier. These communities are located in the long stretch of U.P. along the borders of Madhya Pradesh. Their largest concentration is in Sonbhadra and Mirzapur. They were notified as Scheduled Castes. The fate of lakhs of people belonging to the Kol and other communities in this region got sealed for no fault of theirs.

(ii) Scheduling of Areas

As we move on to the scheduling of areas, the exercise was rather perfunctory. *Firstly,* the exclusion and partial exclusion of the British era related only to the Provinces in British India. The Indian States which accounted for a substantial part of the tribal areas did not have the benefit of that ground work. Moreover, even the classification within the Provinces was rather variable and in many cases remained *ad hoc.* Two Orders were issues by the President in 1950 declaring certain areas as Scheduled Areas in the States of Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Punjab and Rajasthan. The Scheduled Areas of the then Punjab became a part of the Union Territory of Himachal Pradesh and thus got be scheduled. They were rescheduled after the formation of the State of Himachal Pradesh. The total geographical area, thus, scheduled[30] was 99,693 square miles as given in Annexure 1.

The perfunctory nature of scheduling of areas can be judged by the fact that the 'excluded' areas of Mirzapur district in U.P. did not find a place in this list for the simple reason that the people living therein were not included in the Presidential Order of Scheduled Tribes. In the largest tribal district of the country, Bastar in M.P., only two and half tehsils out of eight were scheduled with no ostensible reason for the differentiation. In the States of West Bengal, Karnataka, Tamilnadu and Kerala, which have some of the most vulnerable tribal communities, no area has been scheduled. It is sad that this aspect did not claim the attention of the concerned authorities, including the Governors and the President. This omission has proved to be catastrophic. Even the survival of some of the tribal groups belonging to these States is in jeopardy.

As noted earlier, the above Orders of the President under the Fifth Schedule once promulgated cannot be changed by a subsequent Order except by way of deleting any areas from the said Schedules. Accordingly, any omission at that point of time could not be rectified by a subsequent order for inclusion irrespective of the merits of the case of any specific

area. There were obviously some deserving cases which, on account of that technicality, were left out for good. A suitable amend in this regard, therefore, was sought to be made later. The Scheduled Areas and Scheduled Tribes Commission, therefore, was required, *inter alia,* to report on[31] 'the principles to be followed in declaring any territory to be, or to form part of, a Scheduled Area, or directing that any territory shall cease to be, or cease to form part of, a Scheduled Area'.

All States, except Bihar and Andhra Pradesh, in which certain areas had been covered by the 1950 Presidential Orders, made submissions before the Commission for declaration of additional areas as Scheduled Areas. Moreover, the States of Kerala and Manipur as also Assam in respect of plain tribals, urged for scheduling of certain areas therein. The total area so suggested[32] for inclusion was about 60,000 sq. miles (Annexure 2) or about 60% of the area initially scheduled.

The Commission in its deliberations on this issue recapitulated the earlier history of Scheduling. According to them, the main consideration for 'exclusion' of areas under 1935 Act was the political necessity of keeping the coverage under this category at the barest minimum. In the case of partial exclusion, however, there was no such condition. Any area, which had preponderance of aborigines and was also of sufficient size viable for special legislation and also for special administrative treatment, could be so categorised without hesitation. At the time of the framing of Constitution, the Constituent Assembly did appoint a Sub-Committee to report on the future administration of these areas. This Sub-Committee, however, did not work out any criteria for scheduling. Their recommendations about scheduling, therefore, were largely based on personal observations of its members in the field. The stage of advancement of a tribe or a tribal community seems to have been taken as an additional factor in their recommendations for scheduling the areas, besides the proportion of tribal population and the size of the concerned area.

The focus in the deliberations of Dhebar Commission, as also the presentations before them by the States, was largely on disparity in their economic standards and the possibility of getting special grants from the Union Government. According to the Commission[33], 'some of the areas suggested for scheduling consist of tracts inhabited by very underdeveloped tribes, on whom the State Governments have not been able to spend much from their general developmental programmes. Their demand for additional Scheduled Areas has been made in the hope that they would obtain additional allocations for their development.' The Commission did recomended a set of four criteria, *viz.* (i) prepondence of tribal population, (ii) compact area of reasonable size, (iii) undeveloped area and (iv) marked disparity compared to other areas. They also[34] conceded[35] the point that most of the areas suggested will require to be declared as Scheduled Areas. But they decided not to recommend accordingly because, according to them, that would entail undertaking of surveys etc. 'It could also divert the attention of the people,

their representatives and local administration and the work of development will be seriously interrupted.'

The Commission in fact shared the great ebullience of the time with faith in the leadership at the helm of affairs notwithstanding the ominous default on their part during the first decade. The Commission believed that the nation was really on the move. 'Much water has flown under the bridge since the Constitution came into force,' observed[36] the Commission with confidence. They further added that the two most significant innovations of independent India were (i) acceptance of the principle of planned progress and (ii) adoption by the Parliament the goal of a Socialist Society. Accordingly, the Commission felt that 'the country as a whole, including the tribal people, were looking forward to fundamental changes in the social and economic set up.' In this situation, therefore, the Commission preferred[37] to suggest a 'more positive approach and on a much wider scale than what had been accomplished under the Fifth Schedule'.

'If advancement was the basic goal, some risks were inevitable', according the Commission[38]. This had been clearly stated by them, while dealing with the questions of creating communication infrastructure for opening up of tribal areas and establishment of industries. The concern of the States in their submissions was also for additional funds in keeping with the task which they visualised for these remote and economically backward regions. Those demands could be easily met under the special provision in the Constitution for the Scheduled Areas and the Scheduled Tribes, that is, the first Proviso to Article 275(1) whose potential had not been fully utilised. The Commission, therefore, was of the view that suitable package of programmes put through Tribal Development Blocks could be a partial substitute for the scheme of scheduling the areas for their speedy development.

Accordingly, the Commission recommended[39] in some detail a new package. First of all, the package envisaged that the scheme of Tribal Development should be extended so as to cover all the predominantly tribal areas. While the Union Government must provide more funds for this coverage, it should also be ensured that the central money supplements the State effort and does not supplant the same as was largely happening hitherto before. A separate budget head to enable purposeful monitoring of the investments being made in these areas was also envisaged. Specific suggestions were also made in respect of different aspects of development including agriculture, handicraft, education and health.

The Commission was equally concerned about protection of the tribal people. A large segment of the tribal people was outside the Scheduled Areas. These people also needed adequate protection, perhaps much more, than those in the Scheduled Areas because in the changing scenario their neighbours were more numerous and stronger. The Commission, therefore, felt that the protection to the tribals in regard to their land,

their way of life and against exploitation by moneylenders should be embodied in the general legislation of States which should be applicable both to the Scheduled and non-Scheduled Areas. A time frame of ten years for effective implementation of the general laws and also Governor's regulations was suggested.

The package, thus, recommended by the Commission was[40] 'intended to fulfil the object of the Fifth Schedule'. Its advantage, according to the Commission, lay 'in a definite line of action, which has to be put through in a *specified* period of time, with *specific* targets and *specific* goals.' They were clear that their proposal did not seek to bypass the issue of scheduling. Instead, it was aimed at fulfilling the obligations effectively and expeditiously 'which constitute the essence of the Fifth Schedule and which luckily are a part of our Plan objectives.' According to the Commission *'a cut and dried plan of protection and development' as recommended by them, 'will find greater favour with the tribals than the vague provisions of the Fifth Schedule.'*

This was, however, the best scenario. 'In case, however, this alternative was not acceptable to the government, if there was unpreparedness or default in its implementation within the time frame, or should any Constitutional difficulties arise, the only other course then will be for the Government to undertake the responsibility of declaring the concerned areas as Scheduled Areas', concluded[41] the Commission.

Onto Confusion and Ignominy

Thus, there was a streak of ambivalence in the recommendations of the Commission. It reflected to some extent the general milieu prevailing in the nation at that time. There was unwavering trust in the System notwithstanding marked deviance from the charted path. The real potential of the Fifth Schedule, with focus on the simple and vulnerable tribal people, had not been even appreciated, let alone being realised. It was largely because the basic premises for its effective functioning did not hold in the changing times. The provisions, therefore, were trivialised. While the acts of omission and commission on the part of all concerned, the Governor and President included, were noted by the Commission, yet they were swayed by the euphoria engendered by the grand vision of socialistic goals and planned progress. The implications of the distinctive micro-dynamics of the simple tribal people, rendered extremely complex with the unilateral and unconcerned superimposition of the national frame, were not really appreciated. Accordingly the grand design of the Fifth Schedule which was prepared in general terms with limitless discretion to the Governor to meet specifically the challenge of unpredictable transition, was portrayed as vague. It was substituted by 'a cut and dried plan of protection and development'. This idea not only ignored the complex dynamics of change in the tribal areas but it negated the basic principle of situation-specific response carefully attuned to the micro-dynamics each

group's frame. This is the essence of all provisions concerning the Scheduled Areas and the Scheduled Tribes under the Fifth Schedule and elsewhere. Any attempt at generalisation that too in static frame to the neglect of situation-specificity of a dynamic scene could not but be deemed to be dereliction of duty and negation of the spirit of the Constitution.

In fact, the very first step of the Constitutional Commission was illustrative of this weakness. The Commission virtually equated the exclusive and limitless legislative jurisdiction of the Governor, coupled with the implicit mandate for spontaneous response in the changing situation, with a few provisions in the general laws of the State concerning land alienation and indebtedness. The central objective of this extraordinary power, that is, peace and good government, was totally missed by the Commission. The System was, thus, absolved of its responsibility for a continuous review not only of the activities of the neighbours of the tribal people but also of the long shadow of the State, whose activities were expanding and gradually covering all aspects of people's life. It was forgotten that the essence of the Fifth Schedule is adaptation of the System in response to the needs of the people, their customs and traditions in contrast to the general expectation that the people should mend their ways in keeping with the *diktat* of the State given expression through a bevy of bewildering laws.

The non-recognition, or even the exclusion of the community and its self-governing system, implicit acceptance of whose centrality was the *raison d'etre* of 'non-regulation' and 'exclusion' before independence, in the process of automatic application of all laws, old and new, after independence, was the biggest tragedy which could befall the tribal people. In the confusion about the nature of protection and development again, the Commission, even after recognising the inherent strength of the traditional system, accepted with appreciation the incongruous formal system of *panchayats*. There were good wishes for the traditional councils no doubt. But in the humdrum of the modern world they had no meaning. *Bereft of that natural defence of the community, the people became increasingly defenceless ironically in a situation where the State, its protector and benefactor, itself emerged as the most powerful vested interest.* Even the cut and dried programmes for their advancement had the darker side associated with the flood of money, manipulators and mercenaries who inundated these areas. How could the people, deprived of their natural protection of self-governing system, face their neighbours, the State and its minions and last, but not the least, the inflow of money, machines and jackals along the arteries of the modern system created in the name of their development? was a vital question which no one cared even to ask.

The Commission ironically placed full faith in the very same System to implement the cut and dried programme of protection and development which had miserably failed to respond to the great call of duty implicit

in the Fifth Schedule. The Commission in essence missed trees for the wood. What would happen if that trust was betrayed, they did not pause to think even for a while. 'Back to the Fifth Schedule, should that trust fail', was their prescription. But with what correctives, particularly because not only much water but a high tide would have flown under the bridge in the mean time, they did not suggest. The question as to how could the God that failed even in the early days would succeed in more adverse setting later, remained hanging in the air.

In sum, the Fifth Schedule was pushed into the background ironically by the Constitutional Commission. 'The whole Constitutional edifice of the Fifth Schedule became non-functional because of this dictum of a Constitutional Commission, unconcerned administration and inarticulate political leadership of the tribal people.'[42] The requests of States to schedule many vulnerable tribal areas got securely filed in the record of the Commission. In their place, a programme of Tribal Development Blocks and a few protective legislations which were totally inadequate to meet the great challenge which the tribal people faced, were to be launched. Thus, the well-meaning deliberations coupled with irresolute recommendations of the high powered Constitutional Commission, in the absence of realistic realisation of the real dynamics of the tribal situation, paved the way for the great confusion which prevailed in the System and for ignominy which the people faced in the decades that followed.

Chapter 4

The Disastrous Interlude —Development without Protection

The Early Phase

The general policy for advancement of the tribal people after some vacillation in the beginning was believed to have been satisfactorily accommodated in the 'main stream' of planned economic development by the early sixties. This belief was also broadly confirmed by the Constitutional Commission, *albeit* with some adaptations, relatable to the special features no doubt pertaining to those areas as also with specific provisions for positive discrimination. The grand design of the Fifth Schedule with implicit trust in the Executive, responsive and responsible, vigilant with empathy, resolute and unsparing in action, that too calculated, precise and prompt, however, was given goodbye in favour of the new concept of 'cut and dried' formulations. The backwardness of the tribal tracts in the new frame was equated with the need for larger financial investment. Similarly, the focus on protection, which ideally should have been pursued with obsessive single-mindedness, was reduced to regulation of land transfers and credit. Even these regulations, following the advice of the Constitutional Commission, were to be a part of the general laws with special provisions for the tribal people within the Scheduled Areas and outside.

A series of Tribal Development Blocks were started in accordance with the above policy. These Blocks, by the end of sixties, covered all the tribal tracts, Scheduled or otherwise, having more than two-thirds tribal population. They together accounted for about forty per cent of the total tribal population in the country. A Committee (Chairman : Shilu Ao) was appointed to review the working of the Tribal Development Blocks in 1966[43]. The Committee came to the conclusion that the expectations of Dhebar Commission were not fulfilled. The programme of T.D. Blocks had become a routine exercise. It was much too schematic to meet the specific needs of each one of the numerous tribal communities which were facing widely varied challenging situations. Moreover, the concerned States were hardly making any investments in these blocks from their own resources. The central outlays, which themselves were rather meagre, tended to supplant the State's efforts. There was no mechanism to ensure that the outlays of the Union, which were made available to the States in terms of its special responsibility under the Constitution, were supplemental to the State's

efforts and that the concerned States, in their turn, accepted advancement of the tribal people with care and concern as their constitutional obligation. Similarly, not much had been done by way of action on the protection front in the midst of ebullient rituals of development. The situation, both on land alienation and indebtedness fronts, was deteriorating fast.

The irony is that the Committee having pointed out the short comings, failed to suggest effective amends and remained satisfied with mere reiteration of the recommendations of Dhebar Commission. It called on the Union Government to cover all the left over tribal tracts, that is, all blocks with tribal majority population by T.D. Blocks expeditiously as recommended by the Dhebar Commission a decade back.

Special Projects

It may be remembered that the scheme of T.D. Blocks was running parallel to the general programme of Community Development Blocks. The only difference between the two was that the T.D. Blocks were smaller in size, they were given higher financial outlays and the norms of various schemes addressed to individuals or for general development in tribal areas were more liberal. They envisaged a smaller quantum of people's contribution and larger expenditure *per unit* by the State looking to the difficult situation there. However, while these discussions and adaptations of C.D. and T.D. programmes, which were expected to provide the main thrust of development in the rural and tribal areas respectively, were continuing, they lost their primacy in the new schema of national development with the launching of a large number of other special programmes. The new special programmes in general addressed themselves to agricultural development in selected areas with potential for yielding quick results. The tribal areas with rich natural resources witnessed during this phase, a flurry of mining and industrial activities. Thus, with these changes in the policy and also programmes, the nation was all set to enter a new phase of what can be termed as *'development with disparity'*. The new formulation was acquiesced notwithstanding the certain regression in terms of the avowed socialistic goals of equity and equality. No one really cared in this *melee* for the immediate consequences, as for example, the massive displacement which had become a major issue for the tribal people. It gave rise to acute unrest in many areas. In the wake of failure of protective measures, particularly against land alienation, the people in many areas became so restive that they started unilateral take over of their lands on their own on the strength of old records, for example, as in Jharkhand.

In this changing national scenario, a new genus of schemes addressed to specific groups left-out in the process of development, was taken up to meet the challenge of growing disparity and mounting unrest. A number of special agencies were set up as for example for the development of small farmers, marginal farmers, artisans, fishermen, landless labourers and such like. In the same series of target-group based programmes, some eight

Tribal Development Agencies were started in what were described as sensitive areas. They included Srikakulam in Andhra, Konta and Dantewara in M.P., Phulbani and Keonjhar in Orissa and Singhabhum in Bihar.

The financial outlays for these special agencies were much higher compared to those for the C.D. and T.D. Blocks. They were kept outside the governmental budgetary straight-jacket through the device of a registered society. These societies were chaired by the Collector. They were financed directly by the Union Government. These Societies, however, were exclusively concerned with and dedicated to economic development. Nevertheless other aspects were not forgotten by the government. They were expected to be a part of a larger comprehensive frame which was visualised for these areas, though in vague terms. The investments in social services, such as health and education and the vital aspect of protection, which was at the root of unrest, were to be taken care of by the concerned ministries of the Union, that is, Education and Home. The Agencies themselves were guided by the Ministry of Agriculture and Rural Development. The States were asked to continue with their general programmes as usual in the special agency areas so that the new investment was supplemental.

Thus, in a way, the Union Government directly assumed the special responsibility in respect of some tribal areas, ensuring that substantial additional investment was made and the concomitant issue of unrest was tackled directly by the highest authority in the country, the Ministry of Home Affairs. It is interesting to note that some of the areas selected like Konta in Madhya Pradesh were not scheduled. And there was no proposal to schedule them either as a part of the new comprehensive frame. So in a way, the Fifth Schedule as a powerful Constitutional frame for protection and advancement of the tribal people had gone into oblivion. All tribal tracts were to be treated alike. The programme envisaged uniform coverage on the basis of experience in the pilot projects. The focus of attention in these pilot projects, like all other projects, was individual, not the community. It was assumed that as each individual moved forward, the community as a whole will also move forward, may be, with some time-lag. *Moreover, in the wake of growing unrest in the tribal areas the State was keen to establish 'dependable' leadership amongst the tribal people, who were doggedly defying its authority, if not rising in revolt as in Shrikakulam. The vital issue of protecting the tribal people against their 'neighbours' and the new powerful adversary, the State, was missed ironically in this bid for creation of allies from amongst the agitating people for the very same adversorial State.*

Tribal Sub-Plans

(i) Policy Frame

Any programme of the nature discussed above was doomed to fail. Unrest continued to grow unabated. The Union Government was, therefore, forced to review its policy concerning tribal areas in depth and in detail.

The objectives of the new policy which was formulated after this review in early seventies were, for a change, precise and unequivocal. They were supported by an equally clear plan of action. The objectives[44] in terms of their priorities were as follows —

(1) Elimination of exploitation in all forms, in which exploitation relatable to the State's own policies such as excise and forest came at the top;

(2) Building up the inner strength of the community through education and health, and

(3) Economic development programmes addressed to —

(i) the advancement of the community as a whole, or *universalistic-traditional,* and

(ii) individuals in keeping with the modernisation trends, or *particularstic modern.*

The approach in the new frame was holistic, covering all aspects of people's life. The 'agency' model was abandoned because, by it very nature, an agency can have only specified functions and by the same token, it could not but cover only a part of people's life. *Such a segmented frame is inappropriate for meeting the challenge of transition of simple societies.* The new programme was, therefore, designed as an integral part of the overall national plan of economic development, but with an important difference. While the Five Year Plans of the States and the Centre covered only specific aspects of development, *'the sub-plan for tribal areas'*, as the new programme was designated, was open-ended. No aspect of tribal life was left outside its ambit.

(ii) Delineation of Tribal-majority Area

While the new effort was no doubt designed as a part of the normal governmental budgetary and planning process, but necessary adaptations were made and flexibility was built in the same. In the first instance with a view to achieve clarity and precision, the tribal sub-plan areas were systematically defined and identified. They included all the Scheduled Areas, irrespective of the proportion of tribal population there in, and all other tribal-majority areas. What should be deemed to comprise a 'tribal majority area'?, was an important question in the context of the widely varying situation from almost exclusive large tribal tracts to their highly dispersed distribution both across the country as also even within the same State. A step-by-step exercise of delineation was taken up[45] depending on the situation in each State. A Development Block was taken as a basic unit for coverage under the tribal sub-plans in M.P., Orissa, Bihar, Gujrat, Andhra Pradesh, Himachal Pradesh, Rajasthan and Manipur. These States have large tribal population and also high concentration thereof. In the case of Maharastra, the coverage with Block as a unit would have been less than the nationally accepted target of covering not less than two-thirds tribal population in the first phase in each State. Therefore, areas smaller than a Block had to be identified. The population threshold of a tract for inclusion in the tribal sub plan was reduced in its case to 10,000 people. The condition for inclusion in all these cases was that the area shall be

compact and the proportion of tribal population shall not be less than fifty.

In the case of West Bengal, Tripura, Kerala, Karnataka and Tamilnadu it was necessary to reach out to smaller areas. Therefore even groups of villages cutting across traditional administrative boundaries were identified and carved out for inclusion under the tribal sub-plans. Thus, a flexible approach with a clear objective was adopted. No State was left out of the tribal sub-plan frame on account of any 'cut and dry' formula. The only consideration was administrative preparedness of each State to manage the quantum jump. About seventy percent of the tribal population was, thus, covered under the tribal sub-plans during the Fifth Five Year Plan period (1974-79).

Additional tribal areas of size smaller than a Block were identified during the Sixth Plan for inclusion in the sub-plan in all States. A population threshold of about ten thousand people in general, or even less depending on the local situation, was accepted for this purpose. A modified area development approach (MADA) was formally adopted for these areas. These additional areas are currently known as 'MADA' pockets, usually without any realisation about what the abbreviation stands for.

(iii) Resource Mobilisation : Rational and Purposive

A precondition of holistic approach for development is that all partners involved in the 'game' are brought under one umbrella where they lose their individual identities. Moreover, all resources at their command individually also need to be pooled. The earlier regimented sectorial approach to planning had resulted in countless schemes of varying specifications, without any reason and rhyme, flooding the country side with numerous institutions for executing the same. This had created virtually chaotic condition amidst simple tribal people for whom even dealing with the ordinary administration itself was a big problem. A simple single-line administration, therefore, was envisaged for the tribal sub-plan areas. The Integrated Tribal Development Project (ITDP), at the meso level, was taken as the basic unit for planning and implementation. The T.D. Block, however, was retained as the micro-unit for planning and implementations. A regional authority comprising a number of ITDPs was established at the macro-level for guiding the entire developmental effort.

All the financial resources relating to development of the sub-plan area were also pooled. They comprised[46] broadly four elements —

(i) Outlays from the State Plans,

(ii) Outlays from the Plans of Central Ministries,

(iii) Supplemental outlays by the Ministry of Home Affairs, the nodal ministry for tribal affairs; and

(iv) Outlays of other institutions working in the sub-plan areas including commercial and cooperative banks.

The determination of outlays for the tribal sub-plan areas became an integral part of the preparation of Five Year and Annual Plans of the State and the Centre. The final decision in this regard was taken by the Planning Commission. The formal approval of the National Development

Council followed in due course. Once the sectorial outlays for the tribal sub-plan in each State were determined, they were taken as base investment. It was at this stage that the Union Government was expected to step in, in terms of its Constitutional obligation with the object to supplement the base outlays from the State plans and other resources, to the extent necessary, *for enabling* the concerned States to implement various programmes and achieve the overall plan targets set for the sub-plan areas.

It may be noted here that the principle of matching grants has been followed by the Union Government even for the Scheduled Areas on the same lines as for the general areas. It was used as a carrot to encourage the State Governments to provide necessary outlays for the tribal areas. Moreover, the share of each State in the overall assistance for the plan period was distributed. This approach was abandoned in favour of supplementation principle which was adopted is the new tribal sub-plan frame. The earlier approach, in fact, militated against the economically weaker States which also had larger tribal tracts to administer. Moreover, the principle went against the spirit of the Constitution which envisaged that all outlays necessary for taking up programmes for the welfare of Scheduled Tribes and raising the level of administration of the Scheduled Areas would be accepted as a Charge on the Consolidated Fund of India under First Proviso to Article 275(1) thereof.

To ensure that the scheme of financing tribal development does not remain on paper and is not subject to the whims and fancies of concerned Ministries, State governments and authorities working thereunder, the entire outlay so determined was shown separately in the budgets of concerned authorities. It was later on pooled under a separate Demand in the Sate's Budget for tribal sub-plan. *The supplemental outlays provided by the Union Government were no doubt worked out sectorally, yet they could be used flexibly for any purpose, as may be considered necessary, to achieve the basic objective of tribal welfare with no rigid conditions whatsoever. Thus, necessary discretion was built into the System so as to enable it to meet any situation which may arise in the widely varied social and economic settings of the tribal people throughout the country.* Moreover, these outlays were made non-lapsable so as to avoid year-end rush of expenditure. Finally, even though the outlays were made available in advance, the eligibility thereto was determined at the end of the year on the basis of over all performance of the concerned State compared to the provisions in the State Plans. To the extent of shortfalls in the overall plan expenditure for the year, the supplemental funds of the Union Government were deemed to remain unutilised. But the balance was not to be refunded. It remained with the State available for use in the following year without any further authorisation or sanction.

Eventhough the tribal sub-plans so envisaged were wider in their scope as also content compared to the general plans, the imprint of the general plan frame could not be easily erased notwithstanding the complete discretion built in the same through supplemental outlays of the Union

Government. It was clear that as and when any need arose in respect of any aspect of tribal affairs in any contingency whatsoever, it was the duty of the Union Government to make available necessary funds immediately. The reasons for the contingency could be ascertained later but action must not await any scholarly scrutiny. A review on any count could follow on the basis of which suitable correctives could be made later. The President has necessary powers under the Constitution in this regard as discussed earlier.

(iv) Raising the Level of Administration — Agenda Retrieved and Lost

The issue concerning the raising of level of administration in the tribal tracts could not be expected to claim due attention in a general plan exercise. But with the steady rise in the level of investment under tribal sub-plans, the quality of administration became a critical element not only for the success of the programmes but for the welfare and protection of the tribal people. It, therefore, required separate and urgent attention.

It may be noted that the financial needs of all States, other than those covered by the planning process, are assessed every five years by the Finance Commission. The Scheduled Areas, however, were kept outside the purview of this five yearly review and assessment by the Finance Commission. The reason was simple. The first Proviso to Article 275(1) envisages a very special dispensation for the Scheduled Areas. The Ministry of Finance had clarified[47] the position of the Union Government in this regard to the Second Finance Commission itself in early Sixties. The Union Government in its communication clarified that the constitutional Scheme for financing programmes relating to the administration of tribal areas and the development of tribal communities was comprehensive. It envisaged a continuous appraisal of their needs by the Union Government. According to them *once a scheme is accepted by the Government of India as necessary for tribal development, the Constitutional provisions were attracted and financial sanction for such schemes was automatic.* The required outlays become a Charge on the Consolidated Fund of India. It was concluded[48] that matters relating to tribal areas and tribal communities could not await a five-yearly review of the Finance Commission and, therefore, should be deemed to be outside their purview.'

It is unfortunate that what was supposed to be a continuous exercise of assessment and appraisal of the needs particularly concerning raising the level of administration of the Scheduled Areas to that of the rest of the State, was not even initiated for more than thirty years after the adoption of the Constitution. The assessment of general needs of the concerned States had been carried out during this period six times over by the successive Finance Commissions with no reference to the Scheduled Areas therein. The irony is that the specific problems of the Scheduled Areas did not claim any attention in this five-yearly review because they

were urgent and, therefore, kept outside the purview of the Finance Commissions.

This vital omission was made good, *albeit* partially, by the Seventh Finance Commission. They agreed to look into the state of administration of the Scheduled Areas specially as a part of the 'needs' of the concerned State even as the matter remained excluded from their terms of reference. The Ministry of Home Affairs, in its submission before the Seventh Finance Commission, stated that it shall take up an annual review of the state of administration of the Scheduled Areas on its part as a complementary exercise to that of the Planning Commission for general development. It was also stated that the necessary outlays, which may be considered necessary on the basis of the annual review, shall be made available to the States in terms of the Constitutional obligation of the Union. The assessment of the state of administration in the Scheduled Areas by the Finance Commission every five years and the necessary allocations made by them will, thus, become a part of the long term process which aimed at removing the yawning differential in the levels of development and also of administration of the Scheduled Areas compared to the rest of the State.

Protection as Top Priority

Having thus streamlined the processes concerning what could be termed as 'development' including administration and other residual issues, if any, not specifically provided for, the major question remained about providing 'protection' to the tribal people. It had eluded all attempts till then, which in any case were perfunctory. In the new tribal sub-plan strategy, elimination of exploitation was at the top of the agenda. What is significant even here was that instead of the State keeping itself busy with pointing at others as culprits who had to be tackled and handled, a beginning was made at home, with the review the System itself. It was for the first time that in the case of tribal areas, the State's own position as a vested interest was formally acknowledged by the State. Hitherto all references about the incongruous or even anti-people roles of the State, the guardian of the tribal people, were largely from well-wishers of the tribal people including even some persons in power, which was an exception. That the State shall stand by the people was accepted as an axiom and the System continued to move on with no serious questions asked about the axiom itself

The new frame marked a qualitative change. The inquiry into the State's own role got internalised. It may be remembered that so far as tribal affairs are concerned, a sort of built in 'opposition' is a part of the Constitutional Schema itself. It provides for numerous checks and safe-guards within the System such as the special responsibility of the President and the Governor, the Tribes Advisory Council, a Minister specifically in charge of Tribal Welfare in the States of M.P., Orissa and Bihar under Article 164(1) and the Commissioner for Scheduled Castes and Scheduled Tribes

under Article 338. But, as discussed earlier in detail, the whole institutional mechanism had been trivialised. The worst part of the situation was that the government of the day, whether in the State or at the Centre, was prone to defend the acts of omission and commission of their departments in the usual adversorial style of the Treasury Benches *versus* the Opposition. The spirit of the proposition that tribal affairs are above party considerations and have to be dealt with as a national issue on which there was full consensus in the Constitutional Assembly, remained missing at the operational level.

Fifth Schedule for Tribal Sub-Plans

That the provisions for protection in the general laws of the State were quite inadequate for fulfilling the Constitutional mandate was quite clear. Moreover, the adverse forces were extremely powerful particularly in the wake of the tribal areas being opened up in the name of development and for mining and industrial purposes. There was simmering unrest in many tribal tracts through out the country. The 'cut and dried formula' of the Constitutional Commission obviously failed to click. Therefore, there was no alternative but to fall back upon the provisions of the Fifth Schedule in its wider context concerning 'peace and good government'. Its scope could not be deemed to be limited to mere illustrations of paragraph 5(2) which might have been considered necessary and sufficient for good reasons at the time of the framing of the Constitution. But in the changed scenario, in which the tribal people were losing on all fronts and almost on every count, the fullest possible potential of the provisions of the Fifth Schedule had to be realised. Therefore, *the Union Government accepted in principle that the tribal sub-plans and the Fifth Schedule would serve as the two coequal pillars of the new tribal policy.* While the former[49] 'would primarily provide for economic and social inputs, protection and administrative aspects would be taken care of under appropriate Constitutional provisions. The two together will be so attuned that a reasonable state of peace and good government is achieved in the tribal tracts. It is only on the firm foundation of good government so laid that the goal of advancement of the tribal people and their welfare could be realised in terms of the Constitutional values enshrined in its Preamble and amplified in various Articles thereof.'

A serious problem which arose at this stage related to the scheduling of tribal tracts. The first stage scheduling of areas had been done in a hurry. It was largely on the basis of personal observations of the sub-Committee appointed by the Constituent Assembly. There were glaring anomalies which we have noted earlier. Paragraph 6 of the Fifth Schedule did not admit any alteration by way of additions therein through a subsequent Presidential Order. The next opportunity of a systematic review was missed when the Scheduled Areas and Scheduled Tribes Commission, which was charged with the responsibility of suggesting the norms for inclusion and exclusion of tribal areas in the Schedule, adopted a different approach concerning protection and advancement of the tribal people. According to

the Commission scheduling was not really necessary. The same purpose could be served by the general laws of the State with suitable provisions for protection. Accordingly, the Commission proposed a new package for action by the State referred to earlier in place of the Fifth Schedule.

Another consideration which weighed heavily with the Commission in this regard was that any addition in the list of Scheduled Area would involve a lot of detailed work. It would divert the attention of the people from the main issue of development which was picking up and gathering momentum for the first time after independence. The proposals of the States concerning enlarging the existing Scheduled Areas as in Madhya Pradesh or declaring new areas as in Kerala were not considered. The issue of scheduling of areas, thus, went into oblivion.

The new policy on tribal affairs, in contrast, accepted the Fifth Schedule as a, or a twin coequal pillar along with tribal sub-plans for achieving the Constitutional goal. As has been noted earlier, many tribal majority areas in various States were not in the Schedule. It was, therefore, necessary to add new areas in the Schedule and, thus, enlarge the Scheduled Area. Accordingly, it was decided to amend paragraph 6 of the Fifth Schedule. In the aims and objects of the amending bill, it was clearly stated[50] that

> 'the review of the Sub-Plan area in States having Scheduled Areas shows that while bulk of the Sub-Plan area is covered under the Fifth Schedule some areas are outside. This presents an anomalous situation since effective simultaneous action cannot be taken throughout the Sub-Plan area. *It is, therefore, considered desirable that the area presently covered under the Fifth Schedule may be rationalised so that the Scheduled Area may cover the entire Sub-Plan area in these States.'*

Inexcusable Lapse

In pursuance of this decision, a revised Order concerning the Scheduled Areas in respect of the States of Bihar, Gujrat, Madhya Pradesh and Orissa was issued in 1977. The revised Order in respect of Rajasthan was issued in 1981 and in respect of Maharashtra in 1985. No revised Order has been issued for Andhra Pradesh eventhough the sub-plan covers large areas not scheduled. In the case of Tripura, the sub-plan area has been covered under the Sixth Schedule. So far as Himachal Pradesh is concerned, the first Order of the President was issued in 1976 after the tribal sub-plan had commenced in 1974.

It may be remembered that the process of scheduling has not been envisaged as a one-time action by the President with any cut and dried formula. A clear understanding of the total dynamics of change in each area or even a part there of is an essential condition for any decision for inclusion in or exclusion from the Schedule, as the case may be. The fateful omissions in the first series of Orders by the President in the beginning

have proved to be disastrous for many communities. The damage sustained by the concerned people in most cases is irretrievable as for example, the tribals of Sonbhadra and *Terai* in U.P. and those living on the tri-junction of Karnataka, Kerala and Tamilnadu. It is unfortunate that even after the realisation of grave consequences of not scheduling, even some of the former 'excluded', 'partially-excluded' and other similarly placed tribal tracts were not scheduled.

The saddest part of this story is that the clear policy decision in that regard implicit in the amendment of the Fifth Schedule did not make a difference. The matter was handled casually, nay callously, after the first flurry of the new strategy of tribal sub-plans. The States appear to have been moved, largely by the lure of so-called 'development' part of the new policy. They showed no concern, beyond the ritual of preparing sub-plans, about the welfare of the concerned people which, even as per the sub-plan strategy, had to begin with elimination of exploitation in all forms. The tragedy is that the objective set forth at the time of the said amendment of the Fifth Schedule, which not only commits the government to that policy but has also to be deemed to comprise a resolve of Parliament, receded into back ground and virtually forgotten by all. The tribal people themselves were not aware about what was being planned up there in their name. Therefore no questions were ever raised on the ground in this regard.

No action has been taken in the States of West Bengal, Kerala, Karnataka and Tamilnadu, in pursuance of the above resolution of the Parliament. No one seems to be concerned that it is key to the operationalisation of the 'new policy' about tribal affairs which was adopted as far back as 1974. Thus, the entire tribal population, including those covered by the tribal sub-plans in these States, have been denied the protective shield of the Fifth Schedule. Similarly, the State of Andhra Pradesh has not taken any action so far to include the concerned tribal tracts in the Schedule even after a quarter century of the delineation of the tribal sub-plan areas after careful consideration and areawise exercises.

The story of other States, namely M.P., Maharashta, Rajasthan, Bihar, Gujrat and Orissa is some what different. The tribal sub-plan areas, as identified in the first stage during the Fifth Five Year Plan (1974-79), were fully incorporated in the Schedule through fresh Presidential Orders referred to above. In the case of Bihar, Kaimur of Rohtas district, which is a part of tribal sub-plan, seems to have been left out due to oversight from the revised Order. No action has been taken for its rectification so far. It may be remembered that the first-stage exercise in these States was a part of a process, whose pace was determined by administrative and other practical considerations. The policy about making the sub-plan areas and the Scheduled Areas coextensive has remained unchanged.

With the experience gained in other States, the process of identification of other tribal tracts was resumed during the Sixth Plan in these States

as well. It involved areas with smaller population threshold and even smaller contiguous tribal tracts cutting across administrative boundaries. The administrative delineation at every level, which began during the British regime and is continuing till date, has been done largely with administrative convenience in view. There is virtually no consideration about the ethnic, social, geographical and economic parameters. The additional areas identified in these States during the Sixth Plan, which were formally designated as MADA (Modified Area Development Approach) areas, were incorporated in the tribal sub-plans during late seventies. They have not been brought under the Fifth Schedule to this date even after two decades have rolled by. The sad part is that while no initiative has been taken in this regard either by the States or the Union, all has remained quiet on the political and social activist front as well.

Vested Interests Prevail

A little review will show that there were good reasons for this unconcern and the fading out of the crucial ingredient of scheduling from of the new tribal policy. The 'development' side of the new policy was not only tangible but it could be seen to serve a variety of interests largely related to physical investment. These interests would appear on the scene in various forms and roles, such as direct beneficiaries, as instruments and aids in its implementation like contractors, traders, mediators, *dalals,* petition-writers. Even vendors of dreams like politicians, big and small, come in the same category. With a near-perfect mechanism for devolution of funds under the tribal sub-plans, the message of new tribal policy to all these elements was clear and loud. It reached even the remotest tracts in the form of torrential flow of money, which had remained till then devoid of benefits of development. All interests including those noted above became active and got engrossed in the money game. On the other hand, any action by the State in respect of the other vital side of the policy, namely, 'protection' was bound to affect not only the traditional neighbours of the tribal people but all the new interest groups as well. Here was a wind fall of tribal development for the new groups. They found themselves perched in the midst of the most fertile ground for amassing wealth - virtually unlimited financial resources and unbounded discretion. What had been designed for flexibility, in keeping with the contingency of moving into the unchartered terrain of innocent people and simple economic systems, could be used and in fact was used to the hilt by the articulate for personal and sectional gains with impunity.

The 'protection' part of the new strategy, therefore, remained a nonstarter. Even after the first stage of rationalisation of the Scheduled Areas in the States mentioned about was complete with the passing of the revised Presidential Orders, not a single regulation has been made in any State for 'peace and good government' of the Scheduled Areas. The guidelines of the Government of India, issued[51] in this regard in 1976, with an elaborate frame regarding the elements which should comprise that

System, have remained largely unattended. Madhya Pradesh was, perhaps, the only State which prepared the necessary Regulations way back in 1980 in pursuance of those guide lines. But the proposals got bogged down in the crosscurrents of meaningless correspondence between the State and the Union Governments. Nothing has been done even as about two decades have rolled by.

The President has not deemed it necessary to intervene in this vital matter using the extraordinary powers vested in him by the Constitution in respect of tribal affairs, in which he is the last arbiter. Not a single direction has been issued by the President to any State on any matter whatsoever in the half-century after independence. The silence is ominous because of the fact that both the Union and State Governments have neglected their Constitutional duties. Moreover, they are guilty of not acting in accordance with the deemed resolve of the Parliament for providing effective protection under the provisions of the Fifth Schedule as a part of the new tribal policy.

Ominous Fall-Out

What followed in this situation could have been easily predicted. The tribal people remained defenceless even as there was a new avalanche of development ironically in *their* name for *their* welfare. The guidelines of the Union Government were issued on the presumption that protection and development will not only go hand in hand but will be pursued in that order. The elimination of exploitation had been accorded the highest priority with necessary measures for building up the inner strength of the community as the next item. The central role even in the new frame, however, was still envisaged for the administration, but with a clear mandate about priorities. It was to be reorganised for this purpose with a single-line of command, with clear objectives in terms of protection and welfare of the tribal people and necessary discretion for meeting any contingences. In the absence of real concern and the needed thrust for protection, or even for ensuring that benefits reach the people, the proposition of the single line administration remained a dead letter except to some extent in Andhra Pradesh. In fact, the outcome of the new policy has been just the opposite of its objective.

The heavy inflow of financial resources brought in its wake numerous institutions and organisations, personnel of indifferent quality and a veritable flood of other vested interests mentioned earlier. The bewilderment of the simple tribal people in this *melee* became manifold. A few amongst them, however, did succeed in joining the others side. It is their success stories which are being trumpeted as evidence of the tribal people on the march. But no one in this *melee* cared to look at the severe backlash of development which the ordinary tribal people were forced to face. Even when some exceptional person cared, or dared to raise his finger in that direction, the embarrassment was stoically resolved by quoting from the scriptures -'AFTER ALL should the tribal people be left to live in the stone age with a *langoti* on?', 'Do the tribal people have no ambition?' 'Should they not join the main

stream of development like every one else in the country?' If so, is it not inevitable that some people also fail in that risky game? After all some one has to pay the price of development. Who else will have to do this except some amongst the tribal people themselves for whom the State cares? The last statement is invariably of all those who are on the winning side of the game, with no body caring to see that dice in this game of development has been loaded rather heavily against the ordinary people and on purpose too, with no-win condition secured for the them.

Again, The State Defaults

The Union Government itself could not rise to the occasion. The statesman like leadership role, implicit in he sub-plan strategy which required them to provide overall guidance and to stand by and support in any sphere of tribal life and state activity through supplementation, did not sustain for long. They reverted back and ravelled in the game of figures, money spent, people benefited, roads laid out, *et.al.* Accordingly, the nodal ministry started sanctioning specific schemes under the first provision to Art. 275 (1) like any other centrally sponsored scheme. This practice has destroyed the organic structure of the tribal sub-plans. *The principle of supplementation stands abandoned in gross violation of the Constitutional mandate.*[52]

There has been no change in the tenor or content of the Governor's Reports to the Union Government. No Governor has cared to see what was going on in the tribal tracts except perhaps by way of gracious regal visits to the lands of fables and legends. Even the annual review of the state of administration in the Scheduled Areas, as a parallel process of plan exercise, has not started notwithstanding the commitment of the Union Government to that effect before the Seventh Finance Commission. The Eight Finance Commission expressed its inability to assess the needs of the Scheduled Areas separately because the concerned States had not presented the necessary details. Even this adverse comment of theirs has had no effect in any quarter. The issue itself was simple dropped from its agenda by the Ninth Finance Commission on the ground that 'the need for upgrading these services in the States where they were below average has been taken care of in the norms adopted by the Commission.' It was this process of averaging which was taken exception to before the Seventh Finance Commission in line with the sub-plan strategy which called for clarity and specificity at the highest level concerning all matters relating to Scheduled Areas in due discharge of the Constitutional obligation. The Union Government reverted to the earlier questionable practice with no questions raised any where in any forum.

Even some of the vital decisions of the Union Government concerning elimination of exploitation, as a direct consequence of State's own policies, remained unattended. For example, in a Conference of State Ministers[53] in charge of Tribal Affairs and Forests in 1976 it was resolved that the ownership of minor forest produce should vest with the people. The

decision remained unimplemented, nay unalluded, for over two decades. According to the new tribal policy, the excise policy prevailing at the time was taken as an example of a totally black spot with no silver-lining to commend in its favour. The guidelines of the Union Government, which were issued as the first concrete action as a token of its determination to stand by the principle, *inter alia,* envisaged[54] (i) no commercial vending of liquor, (ii) allowing the people to prepare the traditional brews, and (iii) enabling the community to manage all matters pertaining to preparation, storage, use, etc., of traditional drinks as also liquors. The States did implement the first two points in the guide lines, though with considerable dragging of feet particularly on the point of compensation for the loss of revenue. Their claim for compensation was not accepted by the Union Government in unequivocal terms. There could be no compensation for 'wages of sin' or exploitation of the people. There were some distortions no doubt in the implementation of that policy. Nevertheless the message did reach the people. There was a great sigh of relief after more than a century as the parallel 'government' of liquor contractors was dismantled.

The sad part of the story is that no action whatsoever was taken by any State with regard to empowering the community. The Government of India also failed to press this point hard enough with the concerned States. The result has been just the opposite of what was envisaged. To say the least, it is disastrous. A virtual free-for-all situation has prevailed after the concerned people realised the implications of the new policy in the Scheduled Areas. The incidence of drinking, both of traditional brews and exotic liquors, has touched an all-time high with no precedent to compare. All sorts of vested interests have joined the *melee* with no one to check. The administration looks on as an unconcerned party. Some of the officials may even join the vested interests with supercilious allusions to the tribal people and their ways, as also to the Qixotic nature of State's policy. The community looks on askance helplessly even as its own people, particularly the young, the educated and those having links with the modern system, which has perfected its stranglehold in the mean time, refuse to abide by its decisions. They may even challenge the decisions of the community in courts of law. The irony of the situation is that respected leaders of the community are deemed to act in violation of the law of the land while those who flout the authority sanctified by the traditions and customs of the people move about unchallenged donning the crown of victory.[55]

The fact of the matter is that the absence of a categorical proposition about the community at the village level being accepted as central in the new frame, was the most serious omission of the 'new' tribal policy. This policy has formally continued without any significant change now for a quarter of a century with not even an allusion about this vital omission. This is notwithstanding the fact that the Commissioner for Scheduled Castes and Scheduled Tribes in his Reports to the President had expressed[56] his grave concern about that omission and has deemed the same as an

open violation of the Constitutional safeguards for the tribal people. Similarly, any attempt at building up the inner strength of the community without a frame of real self-governance, by definition, cannot but be in the nature of artificial props which are bound to be inadequate and collapse in the face of new challenges which the tribal people are facing. In any case, even the resolution of the Union Government to use the Fifth Schedule as the 'protection' counterpart of the 'development' thrust under the tribal sub-plans has remained totally unattended.

Backlash- Severe and Unrestrained

As we have discussed in detail earlier, the potential of the Fifth Schedule is boundless. If its spirit were pursued even in the rather constricted conventional frame, the community, which has had the living tradition of self-governance, would have been able to assert, law or no law, as has happened in the case of the Sixth Schedule Areas. In the absence of effective protection of the State as envisaged under the Fifth Schedule and as a direct consequence of disregard and exclusion of the community at the village level from the formal frame, the policy of development with torrential flow of money through rusted and leaking channels, has made the whole exercise dysfunctional. The tribal sub-plans, therefore, have served not the tribal cause as planned but have served[57] as the most potent instrument of neo-colonial capitalist consolidation in the tribal areas through out the country.

Chapter 5

People's Assertion and Epochal Resurrection

As money flows unabated...
the flood ravages the people...
the Guardians, as managers could not care less...
and confrontation sharpens as never before...
... But,
the tide takes a new turn
as people assert...
and declare unilaterally
Mava Nate Mava Raj...
(Hamare Gaon Mein Hamara Raj)
the System is obliged to relent...
leading to—
the unfolding of the unbelievable...
transforming the parameters
of
the continuing historic struggle...
for the Right to Life with Dignity...
but for a change,
now...
... on the *terra firma* of *Gaon Ganrajya...*
embedded in
the Grand Frame
of
the Fifth Schedule
after
its Epochal Resurrection

The New Ferment

"What should one say about a System in which the Constitution itself has bestowed on the President and the Governors unlimited powers for protection and welfare of the tribal people, yet they

> have not been able to save the people from exploitation and oppression of their own servants, and this historic task has been accomplished only by the Naxalites in some areas? What is the intrinsic nature of that System in which the law itself has become the biggest terror for the common man? Under the cover of the law, he is being deprived of everything— right to life, his honour and even his freedom. And the law is being used for exploitation, oppression and finally even to wipe out their social identity itself. Exploitation, terror and tyranny are experienced reality of the common man, particularly the members of the Scheduled Castes and Scheduled Tribes;"

wrote[58] the Commissioner for Scheduled Castes and Scheduled Tribes in his letter to the President of India while presenting the 29th Report of the Commissioner under Article 338 of the Constitution for the years 1987-89. Dwelling on the basic reasons for such a sad state and the possible way out he further added[59]—

> 'This is the tragedy of our national life. Those who are operating the System are helpless before that System; they are prisoners of its logic. They are also perhaps to some extent assured about its promises to the poor. But the common man now has no faith, whatever faith is lingering is also disappearing. There is only one way to come out of this tragic situation, that is, to acknowledge, as the first step, the basic anomaly of our national life, *viz., the ritual of a legal process can strangulate justice*— and give high regard to the wisdom of the people and follow them'.

'That the people can lead' has to be accepted as an axiom in a democratic polity, provided the so-called leaders of such a polity believe in the basic tenets of democracy and have abiding faith in the people. This is particularly so in those cases where the tradition of self-governance survives notwithstanding the vicissitudes of exotic onslaught as in the tribal tracts. Moreover, no living community having a sense of honour can be expected to reconcile endlessly with the state of a veritable war against itself as we have reviewed in detail. Even a worm turns when forced into situations of no-choice except to 'do or die'.

The scenario in the tribal tracts was changing, and changing fast, warned[60] the Commissioner—

'The reaction of the people in this milieu is taking a new form. The people in many areas are rejecting the incongruous System exercising their rights as a citizen of free India. The tribal people in Santhal Parganas are protecting the community right over village tanks even at the risk of their life. ... The people in Kolhan are sticking to their traditional system of self-management and are not prepared to surrender that right in favour of new formal institutions established by the State. ... The people in Bastar and Garhchiroli are claiming primacy of community in the management of

social matters, forests and other resources. They have taken the resolve of 'Our Government in Our Village' (*Mawa Nate Mawa Sarkar*)....'

It was on December 11, 1989 that in the deep recesses of Bastar the people's assertion[51] took a new turn. ***'Swaraj Is My Birth Right'*** *(Swaraj Mera Janma-Siddha Adhikar Hai)*[61] of Lokmanya Tilak assumed a new form there. The movement acquired a new idiom, *Mava Nate Mava Raj (Hamare Gaon Mein Hamara Raj),* as that resolve of thousands of tribal people filled the vast expanse above and aside on the bank of Kotari (deer), a small rivulet flowing quietly after its descent from the fabled *Abujhmad* (Unknown Hills), near a small hamlet Sangam signifying the confluence of the old and the new. The long long search of Swaraj of Faguram Vatti ended on this day with a new realisation. What he had been chasing till then was in vain like the musk-deer-chase of *kasturi* fragrance. *Swaraj* is the sublime realisation within one's own self. It relates to the state of mind and perception about the self, the society and the world around. Moreover, it was clear to the people that their resolve about *Mava Nate Mava Raj* was fully consistent with the spirit of the Constitution. They could swear by the Constitution. They could challenge those laws of imperial vintage which not only were dissonant with the basic structure of the Constitution but offended even specific provisions thereof comprising the Directive Principles of State Policy particularly those laid down in Article 40. Everything had changed on that day for these people who till the other day had been making pathetic pleas[62] before the powers-that-be for example, for 'not burning their huts'. It is the worst possible commentary on any System which may claim to be democratic irrespective of its form.
That simple and clear message *'Hamare Gaon Mein Hamara Raj'* since then has spread far and wide reaching out to the most remote recesses of the tribal world. It is really not a message; it is echo of fervid feelings of their own which they could not express hitherto in the face of the bewildering System which had consolidated its hold on the little world of his little republics. There is, however, little realisation of this change and new fervour in the 'OTHER INDIA' which cares little for the mere worms crawling on the earth in human form, no doubt, somewhere out there, in what has been termed as *Hindustanawa.*[63]

The Commissioner reporting about this change to the President observed[64] —

> 'It is possible that in some cases people in their resolutions may be directly opposing the law, but it is with a difference. If they are at all breaking a law, they are breaking the law not just for the sake of breaking the law, nor are they breaking it as a first step towards the demolition of the System itself as is the avowed objective of some extremist groups. These people still swear by the Constitution. But their contention is that the System has not been suitably adapted in keeping with the spirit of the Constitution even after long 40 years of its enforcement. Therefore they are obliged to disregard the

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incongruous laws on their own, with the basic objective of protecting their fundamental rights, honouring the spirit of the Constitution and establishing human values. ...'

Trivialisation of Democratic Institutions

Such a state cannot arise in a day. There must be many a reason and contributing factors too in each case. But the most basic reason of all reasons for the people rising against the System itself in a democracy cannot but be negation of the basic tenets of democracy. *The analysis, relentless and unsparing, therefore, inevitably pointed towards the derogation of democracy - democracy being reduced to a ritual of voting once in five years, trivialisation of democratic institutions of all descriptions and what is worst and unpardonable, the negation of the community and its natural right of self-governance.*

The search, which really is not necessary for any one having faith in democracy, thus, brings self-governance to the centre of the stage as the core issue in tribal affairs after independence. In fact, it is clear that any other measures in the name of development, or protection of the people or any change in any facet of their life are bound to be Quixotic, perfunctory and meaningless. Thus, observed[65] the Commissioner :

> "The only reason for the wrong direction and profusion of anomalies in our national life is that not only the establishment of a truly self-governing system in the village has been neglected even after independence, but on the contrary centralisation has been growing in all matters concerning people's life. The formal representative institutions, which the people got in the name of self-governing system, could not become their own and in the present situation, they cannot become their own. Moreover, the same structure has been superimposed as it is on the tribal areas which has had serious consequences for the tribal people.
>
> "Self-governance is still a living tradition in the tribal society. The tribal people had been struggling ever since the British days against the 'criminalisation' of the whole community due to the superimposition of incongruous laws and complex administrative system and disregard of their rights over the local resources. But the extension of formal representative institutions to the tribal areas after independence has had the effect of introducing two separate structures even at the social level. In this way, a peculiar incongruous situation has arisen in the tribal areas. On the one hand, because of this artificial division between what is termed as modern and traditional, there is no possibility of new ideas reaching the traditional institutions. Consequently stranglehold of ritual on the traditional institutions continues unabated, if not becoming stronger because of fear of erosion of its authority. In many areas brutal murders on charge of sorcery, usually with hidden motive of economic gain or personal vendetta, have become quite common about which even sensitive social workers feel

helpless. Even where they may succeed in getting a suitable legislation passed, as in the case of *'dians'* in Jharkhand, Bihar,[66] the impact may be insignificant. On the other hand, the formal institutions are acquiring their distinctive identity. Consequently disregard of community interests has become quite common. These institutions, because of the politics of vote, have become an important cause of social discord. On the other side, they do not have much to do with the real problems of the people's life. Therefore there is no opportunity for a healthy dialogue between the formal institutions and the community. *This duality has been forced on the people against their will, largely because of lack of understanding about the tribal situation. Such an organisational structure in the tribal areas is an open violation of the Constitutional schema.*

"It is on account of this anomaly that the tribal people are rather confused. They are searching the significance of freedom and democracy in the immediate context of their own life. Forest, land, government officials— nothing has changed; on the contrary the situation has further deteriorated. They have nothing but disillusionment in the bargain. They are unable to understand the meaning of freedom. On the other hand, when they talk about simple things like managing their own affairs and try to pursue the idea, there is confrontation; they may have to face the charge of being anti-national. *A number of tribal-majority States have been established in the North-East yet the situation is not much different in basic essentials. There is an unstated confrontation between the formal authority of the State and the traditional authority of village community, which is becoming increasingly sharper.*

"All these anomalies and confrontations in tribal areas are not in keeping with the spirit of our Constitution. They must be ended forthwith. *A two-tier structures of institutions— one at the level of the small face-to-face community (hamlet) and the other at the level of a small group of villages (pargana), in consonance with the tradition in tribal areas, should be established. These institutions should be given the opportunity of managing all aspects of their life—new and old— so that they can adapt their old traditions with reference to the new situation, they can establish new conventions with good understanding of the emerging needs, and what is most important, they can learn from their mistakes. They should be enabled to retain their identity as a living community, so that they can become equal partners in the national life with dignity and self-respect retaining the best from their tradition and assimilating the significant achievements of the modern society. This is the essence of Constitutional schema for the tribal people. This is not only a national obligation, but also a great responsibility towards the entire humanity— this is the last hope for recreation of a society based on human values."*[67] (Emphasis added)

Ruling Elite Refuses to Relent

No heed was given by the ruling elite, political parties of all shades, intellectuals and academicians included, because in their perception tribal affairs were deemed to be equivalent of the so-called tribal development. Moreover there was no worthwhile debate on the issue of development itself after the demise of Gandhi. The very same paradigm as obtained in the Imperialist-Capitalist World, which had also been accepted by the Communist Block led by the Soviet Union with the sole exception about the roles of the State and the market, was adopted as it was by the rulers in a hurry to move on at any cost. In this milieu, as stated earlier, development got equated with production of goods and services which, in turn, was deemed to be determined by the cut and dry equations of capital and output. What we, therefore, have in the name of development is a frenzied obsession with money and investment. The tribal areas in this paradigm, were deemed to be 'backward'. The missing element in the onward march of these 'backward' areas was money. *Money, and more money can be said to the kernel of all debates about tribal affairs during this phase.* Even the Dhebar Commission had been caught in this tidal wave of post-independence era. The real issue of harnessing the tremendous energy of people's initiative released like an explosion in those eventful decades of freedom struggle was not only missed in the tribal areas but in the nation as a whole.

'The only frame at the local level which could answer this need of the hour was that of the Gram Swaraj or village-republic with the natural foundation of the village community'.[68] It is unfortunate that this village community, which in the form of *panchayat* in the open under the bunyan tree has sustained the spirit of Indian Civilization through the ages and which was sought to be brought to the centre of the stage as per the most vital provision of our Constitution under Article 40, again stood excluded in the new formulation. That living *panchayat* was transmuted into *sarkari panchayat in* the formal frame of democracy of the so-called people's representatives. In fact, *this simple device of non-inclusion of the village community in the System has been innocuously and insidiously used to effectively erase the vital issue of 'power to the people' from the national agenda*[69]. The community has been battered by all sorts of forces, old and new, internal and external, all through the long fifty years, punctuated with stints of exuberance and depression.

In this milieu, the formal proposal for special dispensation for the Scheduled Areas placed before the Committee on Panchayati Raj Institutions (Chairman : Ashok Mehta), by the author on behalf of the Government of India, which was reiterated later by him in his Report as Commissioner quoted above, was not even considered. It may be recalled that this

Committee had been appointed in the wake of the great new upsurge of freedom and true democracy after the dark days of emergency. The new policy about tribal affairs launched a little earlier was still at a stage in which various parameters for realisation in reality of its real spirit were being firmed up. This proposal, in essence, envisaged participative democracy at the village and the group of villages level. All institutions at these levels must be unequivocally answerable to the people. The representative democracy should begin at the block level and go up to the national level. Even the pleadings of Siddharaj Dhaddha, a member of the Committee, was of no avail. He laid stress on building up the Panchayati Raj with the village or the face-to-face community as the base and the *Gram Sabha* as an integral part of Panchayati Raj. The only reference which his stark warning that 'without this *(Gram Sabha)* base not only democratic decentralisation would have no meaning but democracy itself would remain fragile', could earn[70] was about *'Gram Sabha* deserving genuine encouragement'.

The latest bid in early nineties to invest the Panchayati Raj institutions with Constitutional aura through 73rd Amendment made no difference in this regard. It was no doubt conceded to bring in the collectivity of the people in the form of *Gram Sabha* in the formal Constitutional frame *vide* Article 243(b), but not without jeers and not without reservations uncountable all through. It was ultimately conceded by the Government rather unceremoniously that the *Gram Sabha* could also have some powers. But what these powers should be, the Great Parliament did not condescend to write in the Constitution for they after all concerned the puny creatures named *gram sabhas*.[71] These were matters of detail in their perception; they were left out as the prerogative of the Legislatures of the concerned States. They could deal with these poorest of the poor cousins the way they chose best. Thus, Article 243A envisages :

> ***A Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a State may, by law, provide.***

No Legislature of any State in the whole country, in its turn, considered these 'punies' worthy of the trust implicit in endowment of real power.[72] *All legislatures irrespective of the political parties in command, shared the implicit political consensus in the country in this regard, that is,* ***not to trust the people.*** *This consensus had been formally expressed through the unanimous resolution of the Joint Select Committee of the Parliament earlier while examining the draft of the Constitutional Amendment itself.*[73] *The resolution unabashedly stated that the Gram Sabha cannot be given any powers; at best it can be given some functions. It is, therefore, not surprising that the first draft of the Constitutional amendment concerning panchayats simply had no provision of 'gram sabha.* The situation at the grassroots, as it obtained after the State laws had been adapted after the 73rd Amendment, is also no real complement

to a real democracy. It can be summed up[74] as

'Pita ki bat par vichar,
Anuchar ki agya ka palan,
Yah hai panchayati raj ka sar.
Consider May You What Thy Father Sayeth;
Yet Obey Must Ye; *Farmans* (orders) of Thy Servants.'

This is the essense of Panchayati Raj.

This negation of the real spirit of self-governance in general was possible in general areas for two reasons. *Firstly* the community in the village had been shattered beyond recognition under the colonial regime. Now even the memory of self-governance has faded out. *Secondly,* the people's attention got diverted to the so-called development which itself got degenerated into squabble and strife for easy gains. This game has become so obsessive with continuing erosion of the economy of the village, that there is no space or scope for even an allusion about the ideal of self-governance. In the tribal areas, however, the tradition of self-governance is still a living force. It was undoubtedly under strain but in its face the new Panchayati Raj institutions could not gain acceptability of the people, let alone credibility and legitimacy. Accordingly the traditional values remained ingrained amongst the ordinary people who held them high and dear, notwithstanding the concomitant erosion thereof set in by the exotic implants. The proposition about the possible harmonious functioning of the traditional and the formal in their respective segments as visualised by the Dhebar Commission, which would pave the way for the one subsuming the other and becoming responsible for the whole, proved to be fallacious. In many areas, therefore, as stated earlier, the dissonance between the traditional and the formal led to simmering discontent, and occasional outbursts in various forms.

People against the State : Defiant Assertion

The resultant confrontation between the people and the State assumed a new form with the assertion of the right of self-governance by the people as their natural right, which was also implicit in the Constitutional schema. The issue could not be ignored because the sub-plan strategy concerning tribal affairs, which concerned the economic front, had in the mean time, floundered on the hard rock of the anti-people 'imperial' system. It had got reinforced ironically after independence in the name of welfare and democracy.

What the people were asserting had already been conceded by the State at the time of the adoption of the Constitution even though the System refused to relent. That the people's assertion may not be in consonance with the provisions of law, that it may even be violative of the law; that notwithstanding these facts the assertion would be in keeping with the spirit of the Constitution; and that the unfortunate situation of

confrontation had arisen because of the inaction by the government with regard to what had already been explicitly okayed in principle by the Parliament itself, had been brought out clearly by the Commissioner in his Reports to the President.[75] This issue, however, could no longer be ignored by the government. In fact, it was frantically searching the missing key about the cool unconcern of the people in general at the national level even as the 21 Century was knocking at the door. It is unfortunate that the search ended up with mere window dressing of the 73rd Amendment. The changes related mostly to the form without touching the spirit. It could do for some time and keep the people quiet in the general areas, where the basic issue of self-governance really never caught on and remained subsumed in the *halla gulla* of development. But the same could not meet the aspirations of the tribal people. They were set against the State on specific issues concerning self-governance including command over resources. The State, therefore, had to relent in the case of the tribal people while it continued with the good old game of *panchayats* with a little more crumbs to satisfy the unending stream of aspirants for a share in the lucrative business of development and real politik.

The First-ever Exception : A Historic Turn

The first vital decision in the case of the tribal people was to exclude the Scheduled Areas from the purview of the new provisions concerning Panchayats and later about Municipalities which were enshrined in the Constitution through the 73rd and 74th Amendments respectively. *It was for the first time in the legislative history of India that a conscious decision was taken before the enactment of a law about its suitability for the Scheduled Areas. The law on Panchayats is otherwise inconsequential in the bewitching* galaxy of *luminous laws of various States*. But in the small world of the tribal people, in their perception it has a place like that of the Sun in the Universe. It is the very source of life' in all its forms and hues uncountable. This law, therefore, has evinced fervent interest amongst the tribal people ever since the very first step for its enactment was mooted.

In the first draft of the Constitutional Amendment, the responsibility for extending Part IX concerning Panchayats to the Scheduled Areas was placed on the concerned Governors.[76] It was in keeping with the role of the Governor as the sole Legislature for the Scheduled Areas, discussed in detail earlier. But looking to the dismal performance of Governors, nay their total failure in discharging the grave responsibility, which in many cases can be said to be the sole reason even for some communities being wiped out, it was deemed necessary that the vital task in this case should be undertaken by the Parliament itself. It was also noted that this was no ordinary law. The task involved adaptation of the Constitution itself in its application to the Scheduled Areas. Accordingly, a provision was made under Article 243M(4)(b) as —

> Parliament may by law, extend the provision of this Part to the Scheduled Areas... subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

A similar provision was made later in respect of Part IXA concerning Municipalities in the Scheduled Areas *vide* Article 243ZC.

But Apathy Continues

This 'inconsequential', nay 'doubly inconsequential' or 'inconsequential square' provision went almost unnoticed in the country at all levels. It concerned *'panchayats'* which, as stated earlier, are inconsequential in the perception of the ruling elite and doubly so because it concerned the little known Scheduled Areas. The Parliament after passing this law forgot that it had assigned unto itself a grave responsibility about the adaptation of the said law, that too under the Constitution and for the most vulnerable sections of the people, the Scheduled Tribes, which constitute this Great Nation. Even the State Legislatures, who are supposed to be nearer the people, failed to take note of the vital fact clearly stated therein that Part IX of the Constitution does not extend to the Scheduled Areas. In all States having Scheduled Areas, except Orissa, the Panchayat Raj Laws, whether newly enacted or duly amended after the 73rd Amendment, however, covered the entire State making no exception of the Scheduled Areas. In Orissa, the amended Act concerning Panchayats was extended to the Scheduled Areas through a notification by the Governor without making any significant change, just for the sake of keeping the form. Later, all these Acts were declared unconstitutional in their application to the Scheduled Areas by the respective High Courts beginning with Andhra Pradesh.[77] The Supreme Court refused to intervene[78] in the face of the provisions of Article 243M, clear and categorical.

The record of the Union Government was no better. In fact the real lapse was on its part. It remained a silent observer when the States started adapting their respective laws on *panchayts* in the light of Part IX of the Constitution but ignoring the vital provision concerning exclusion of the Scheduled Areas. Ironically in the beginning the Union Government itself was of the considered view that the Parliament need not be bothered about adapting the Panchayat Law for the Scheduled Areas. The Governor of the concerned State, according to it, has the necessary powers to do the needful. Therefore, he could extend the concerned laws with suitable exceptions and modifications, as he may deem necessary. This view, however, was challenged[79] on two grounds. *Firstly,* in this case the adaptation related to the Constitutional provision itself which envisaged that the Parliament must shoulder that responsibility. *Secondly,* if the Parliament so desired, a one-line resolution could be passed that no exceptions and modifications were necessary. Otherwise adaptation, as per the provision in the Constitution, had to be done by the Parliament itself, and no one else.

Finding itself caught in its own logic and faced with the defiant people who would not wait for the amendment, the Union Government relented. A Committee of Select Members of Parliament and Experts (Chairman : Dileep Singh Bhuria, M.P.) was appointed[80] to suggest the specific exceptions and modifications in the provisions of Part IX concerning Panchayats. A second Committee with some changes in membership was constituted with the same objective for Part IXA concerning Municipalities. Even these Reports got entrapped in the concerned Ministers. It took about two years before the Parliament could enact the Provisions of Pancnayats (Extension to the Scheduled Areas) Act, 1996 (Hereafter referred to as the Extension/ New Act/Law depending on the context.) that too under the growing pressure from the people's side who in some areas had launched a civil disobedience movement. It is regrettable that the provisions of Part IXA concerning of Municipalities still remain to be formally extended to the Scheduled Areas, even as more than six years have rolled by after the 74th Amendment came into force with effect front 1.6.1993.

Scheduled Areas - A New Realisation

The most significant, nay vital and crucial, aspect of the innocuous-looking provisions concerning non-application of Parts IX and IXA to the Scheduled Areas is that non-action on the part of the concerned authorities results in a vacuum which could be realised and felt by the people. Moreover, *as the people come to realise that the adaptation of laws in keeping with the special socioeconomic situation is mandatory, they can question the validity of many a law and even the underlying premises which hitherto they were obliged to accept as given.* It was in this new frame of reference that the Bhuria Committee undertook the task, examined the issues concerning self-governance in a holistic frame uninhibited by any other constraints and made comprehensive recommendations. As we will presently see the law based on the recommendations of this Committee makes for a radical change on many a count concerning governance in the Scheduled Areas. The tribal people, for the first time after independence, are becoming aware about the existence of the Scheduled Areas and the significance of special provisions thereunder.

The Extension Act came in force[81] on December 24, 1996. The Act envisaged that the concerned States would suitably amend their respective laws within a year. According to Section 5 of this Act, any provision of any law for the time being in force in the Scheduled Areas, which is inconsistent with the provisions of that Act, may remain in force till it is amended or repealed, or for one year, that is, 24.12.1997, which so ever is earlier.

Community at the Centre

The New Law for the Scheduled Areas envisages[82] village community as the basic unit of the self-governing system. The fatal flaw, which has plagued the process of formal transformation of the System with the organic

village community as a formal legal entity as its axis ever since the framing of the Constitution itself, has been taken care of in this law. The law does not define community. The community comprising all the people in the habitation or a group of habitations, as the case may be, is taken as it is, as a given element or *swayambhu.* Accordingly, the formalisation begins with the village. It is the term 'village' which has been defined in terms of habitation(s) which comprise 'a community and manages its affairs in accordance with traditions and customs'. *Thus the formal 'village' and the organic 'community' become congruent in this frame with no possibility of any mismatch.* Accordingly, it is now possible to build the entire formal structure on the foundation of this organic entity which had also acquired a formal identity. This simple but vital transformation has eluded the System for half-a-century.

This change is not a mere formality. It is pivotal in giving real meaning to the concept of 'building up of a new System on the foundations of the traditional System'. Hitherto, all formal structures created in the name of Panchayat Raj have missed the living reality of the functioning community. The 'village' which is the foundation of Panchayat Raj, is not the village which the people consider as *their* village, but is what may have been so recognised under the revenue law or even the Panchayat Act. The village so far has remained a formal entity created for the convenience of administration or even for facilitating development. But it could miss that organic community which is the soul of village life with no questions asked. *Even the 'Gram Sabha' in all State legislations and in the Constitution itself has remained a formal artificial construct. The collectivity of the people comprising this so called Gram Sabha, more often than not, is a crowd. In the new Extension Law it is the other way round. The village has been defined with reference to the community, the general body of the people living in that village. In other words, the Gram Sabha is the village community itself, its legal avatar so to say. The recognition of the community as the basic unit of self-governance lays the foundation for participative democracy in the real sense.*

Once the village community managing its affairs in accordance with its customs and traditions is taken as the basic unit and the building block of the *Panchayat Raj* System, the formal recognition of its role in the law is a mere formality. It is a courtesy due to the people by their representatives. It has been duly observed in this law. *Sec 4(d) does not envisage devolution of powers. It merely acknowledges the 'competence' of the Gram Sabha.* The simple formulation herein simply lays down its plenary powers, that is,

> **'Every *Gram Sabha* shall be *competent* to safeguard and preserve the traditions and the customs of the people, their cultural identity, community resources and the customary mode of dispute resolution'.**

This small provision, in effect, transforms the entire legal edifice of

the Scheduled Areas. The serene system of the tribal people, which they have been managing according to their traditions and customs from time immemorial has remained so far unacknowledged by the laws of the land which largely concerned the larger System. The inherent contradiction and the concomitant confrontation between the State and the People were avoided and resolved by the British rulers through the device of 'non-regulation', 'exclusion', and other softer variants thereof. However, they reappeared in full bloom ironically after independence with the adoption of the Constitution. The main reason for this reversal was little appreciation of the intent and the content of the Fifth Schedule which was really designed precisely for warding off the very same contingencies.

This proved to be the most unfortunate phase for the tribal people. Even the most innocuous provision, in the name of law, be it, a regulation, a rule or a mere notification, could be invoked to question the authority of the Village Council and their revered Elders. Even well-considered wise decisions of theirs concerning vital matters like temperance, resolution of disputes or management of resources could be dubbed as violation of law. The members of the Village Councils and their leaders could be hauled up as ordinary 'criminals' even though they may not know any thing about the laws which they are supposed to have violated. 'Ignorance of law is no excuse,' may be flung in their faces nonchalantly.

It is this ungracious scenario which gets *'turned about'* with the small provision concerning the *Gram Sabha* in the Constitution. The community in the village, that is the *Gram Sabha,* managing its affairs in keeping with *its* traditions and customs, is now at the centre of the stage. *If any law, however big, Central or State, is not in consonance with the little system of the little village, it is the big law which is deemed as incongruous and inapplicable, not the 'little' traditions nor the 'lesser' customs.* It is the duty of concerned authority to remove that incongruity while the life in the village remains unaffected, unconcerned. If the authority fails to take action, the big law, to the extent of it incongruity, according to Section 5 of the Extension Act, is deemed to have lapsed so far as the community is concerned. This is as it should be in a real democracy, where power vests with the people.

Lest the above statement is misconstrued as eulogisation of the demos and their tradition as sublime and perfect, this provision is not exclusive or an isolate. It is an integral part of the Constitution with basic values and tenets which are inviolable. It is true that as the matter stands now no law can supersede the traditions and the customs of the people comprising the community at the village level. But the latter, in their turn, have to be consistent with the values and tenets of the Constitution. Whatever may not be consonant with the same has to be shed in the true spirit of democratic polity. Such a response is natural for living traditions. This principle has been accepted universally and made explicit in Article 8 of Indigenous and Tribal People's Convention 1989. (See Vol. II) The

little systems of the little republics will measure upto that ideal undoubtedly. Nevertheless it will be necessary to establish procedures as has also been envisaged in the Convention, to resolve conflicts which may arise in this regard from time to time.

The small provision concerning the *Gram Sabha,* in this frame, can be said to comprise the *Magna Carta* of *Gaon Samaj* or the village community.[83]

A *Magna Carta,* however, has a serious limitation. It may comprise an ideal enunciation of principles which may have no meaning unless they are precisely relatable to the specific issues. Adequate care has been taken in the new Extension Law in this regard. It goes much beyond just laying down a general formulation. It deals specifically with some of the most vital aspects of the people's life which hitherto have been governed by a bevy of laws enacted in isolation with almost no concern for the ways of the people, particularly the tribal people. The management of community resources easily comes at the top. It is now the responsibility of *Gram Sabha* . The most lethal provision of land acquisition has been reasonably contained by making prior consultation with the community about acquisition of land as obligatory.

The biggest challenge which the tribal people, or for that matter the village community, has been facing ever since the advent of the British Rule, concerns their relationship with the outside world. The protection of the tribal people is an unequivocal responsibility of the State under the Constitution. The State has not only miserably failed to discharge this responsibility but has emerged as a partisan force and even as a vested interest during the most critical phase of the history of the tribal people. *'The Extension Act makes a bold departure from this position. While the State and its organs have not been absolved of their Constitutional obligation, the community, which so far has not been even formally recognised, has been empowered in the form of Gram Sabha to meet the challenge both from within and out side'.*[84] In particular, the community will have the necessary powers for control over moneylending, village markets and, last but not the least, all matters concerning preparation, sale and consumption of intoxicants including enforcement of prohibition.

A New Perspective of Roles and Responsibilities

In this organic frame of roles and responsibility the so-called developmental functions cannot but comprise just a small segment thereof. This is so in the real life of the people in general, but more so of the tribal people. The secondary position of development in the new schema stands out in sharp contrast with the long and dark shadow of the so-called developmental activities on all aspects of national life and the obsession of all concerned with the same, with little concern even for vital issues concerning the people and their life. This obsessive concern for the so-called development has led to phenomenal concentration of power. It has

militated against even the limited developmental goals themselves. It has become self-defeating. While developmental activities have fallen in right perspective in the new frame of village self-rule, the Extension Law also makes a qualitative change in the design of the power structure.[73] All powers concerning planning and execution of all programmes now vest in the *Gram Sabha.* All funds concerning any programme whatsoever will be at its command. And the most vital point which concerns all formal developmental activities is certification of expenditure. Henceforth the *Gaon Sabha* shall certify the authenticity of all expenditure.

All schemes of delegation and also devolution of powers so far have floundered on the most sensitive issue concerning the role as well as the control over bureaucracy. The officials at all levels have been quoting scriptures about their neutral role concerning execution of policies and programmes government and against any political interference in administration. They have been ostensibly claiming what can be termed as the aura of a self-managing executive immune from political interference. This is understandable as a principle. However, in the instant case, it is loaded with self-interest. There is also an element of hang over of the imperialist psyche. But what is particularly significant and damaging is that both the political executive and people's representatives in the States and also at the Centre have been disfavouring any scheme of control and accountability of the executive machinery by their counterparts in the elected bodies at the district and lower levels. The new scheme for the Scheduled Areas is unequivocal on this point. The *Gram Sabha* and the Panchayats at appropriate level will have the power to exercise control over institutions and functionaries in all social sectors. Even the non-government institutions and their functionaries are covered under this provision.

Non-Centralised Polity

One of the worst aspects of the current national scene is over centralisation in all spheres of national life, political, administrative and economic. Even when powers are delegated, they may be taken away, directly or indirectly, not always using honourable means or for honourable purposes. The Extension Act specially takes note of this possibility and specifically prohibits assumption of the powers and the authority by any *Panchayat* at a higher level of any *Panchayat* at the lower level, and of the *Gram Sabha.* That 'such a provision is now a part of the Constitution will embolden the *Gram Sabha* to resist any such attempt, even if the State defaults' or becomes a party thereto[85].

Thus, the pivotal role of *Gram Sabha,* the formal mirror-image of the village community, has been acknowledged and necessary space has been carved out for the same within the formal structure of the State in the Constitution. *It has been especially protected against any intrusion by any other authority whatsoever including the State itself. It is important to note here that the role of an organic body like the Gram Sabha cannot be contained in any cut and dry static frame. Once Gram Sabha as an*

organic entity acquires the firm foundation as per Constitutional provisions themselves, it will have to attend to all aspects of people's life. It cannot take a formal stand like other formal institutions that any issue, small or big, concerning the life of people is outside its purview. The *swayambhu Gram Sabha* has a natural mandate which it cannot afford to shirk.[86] It will be *un-Gram Sabha-like.* Therefore, the scope of the role of *Gram Sabha* can be reasonably expected to get enlarged as the people gain experience in the new setting and acquire confidence in dealing with various matters concerning their life in the new formal frame. Moreover, as people become free from their worries about exotic intrusions challenging their very survival as a community, they will naturally attend to finer aspects of life. In that case development cannot remain a listless pile of *sarkari* programmes. It will assume the form of an organic process informing all aspects of people's life. The higher institutions of State in this setting can be expected to shed their load and get relieved of the self-acquired 'brown man's burden of civilizing the masses', particularly the tribal people. 'They will attend to functions which should really belong to them in a democratic polity wedded to the ideal of equality, equity, liberty and fraternity'.[87]

Thus, 'the new law marks the beginning of a new chapter in the history of democracy in our country, perhaps in the world. The ground is now clear for participative democracy'[88] in the face-to-face setting at the village level. The people in the village can understand what they are talking about and influence the policy in a decisive way with meaningful and mature direction of affairs concerning their own day-to-day life. Thus, the village panchayats, as also all other panchayats under the Panchayat Raj, will in due course 'draw their strength, authority and sustenance from the village community'. Hereafter they cannot remain 'as before instruments through which the state governments and its officers would control and manipulate the villages people... and an extension of bureaucratic rule from above'.[89]

As the State formally recognises the community and its authority in vital matters concerning people's life, the antagonistic relationship between the formal frame of the State and the informal human and humane system of the community should also cease. In fact, removal of dissonance between the tribal tradition of self-governance and modern formal institutions, will be the most important implication of the Extension Law which has been at the root of the simmering discontent, continuing confrontation and intermittent revolts. This will mark a new era in the history of the tribal people. After the new institutional frame becomes operational, *'the people will be able to perceive the state apparatus as an extension of their own system in the service of their community, that too is a crucial phase of modernisation firmly rooted in the tradition.'*[90]

And this epochal transformation of the legal frame for the Scheduled Areas will not remain a momentary muffled flutter of some papers in a file as has been the fate of many a radical law. The ball is unequivocally in the people's court this time. What the State does or does not do is its

business. The people are clear about their role and their responsibilities enshrined in the Constitution. The *Amar Jyoti*[91] will light the people's way to the little republichood, responsible and dedicated to the great ideals and objectives in the Constitution. The Resolve is being *engraved* on Stone Edicts. The Edict has already become a symbol of people's aspirations in thousands of villages. It is their *'gram devata'*.[92] Let no one dare be irreverent or insolent. They are confident that the *gram devata* will lead them to a fulfilling life behoving the great tradition of their egalitarian community.

Thus, the process is on. Tide has turned. There is a new spirit permeating all tribal areas. Nay, the smouldering fire under the limitless piles of unwanted slack is flaring up with the squall of realisation about people's power and its potential. This cannot stop. It cannot be stopped. What those of us who are concerned and also conscious about the change, can do is to help the people and quicken the pace of change; we can act as facilitaters in removing the road blocks which are likely to be created by the vested interests, whose nature people may not be able to realise at the moment; we can also warn the vested interests on the other side about the futility of their efforts in clear terms, should they refuse to see the Writings on the Wall.

The change heralds a new era in the history of the tribal people, nay, the history of our nation. Henceforth it is the people who shall lead in the building of a new social order. The curtain will fall on a tragic phase of history in which the State was pitched against the people and was ravaging the community - a facet not even alluded to, nay not even recognised formally. What we will be witnessing will be the organic and historic growth of our Constitution itself as the scene of creative action shifts to the Little Republics under the luxurious canopies of bunyan trees, sacred groves in the tradition of Valmiki, Vallabhi and Buddha, recreated in our own times in Sabarmatis and Sevagrams'.[93]

Yes, the Constitutions are not only made, they also grow in living democracies.[94] Ours is also likewise being remoulded to begin with in the remote tribal areas as the community is moving to the centre of the stage in the mellow little lights of their tiny mud pots.

Chapter 6

Command Over Resources

Background

The command over resources and other means of production is the central point in all social formations beginning with the primitive communities in the stone age to the most modern age of industrial and post-industrial societies. The tribal people and even agricultural communities have been traditionally associated with a geographical tract, the habitat of the community, on whose resources all members thereof depend for their living. The command over the resource-base of the habitat, therefore, cannot but be the very essence of any system of self-governance. Any supra-structure of self-governance, without the firm foundation of command over resources, howsoever beautiful, will be like a castle built on moving sand. The history of man is replete with traumatic tales of people deprived of their traditional command, right from the Great Exodus, and even earlier, down to the modern 'civilized' versions thereof such as involuntary displacement.

Before the advent of the British rule in India, it was the community at the village-level which, by and large, enjoyed command over all resources within its geographical expanse. The rulers could claim only a share in the produce, and no more. In total disregard of this hoary tradition of our country, the command over resources in all territories, which came under the sway of the British rule, was taken over by the State. This take over was deemed as natural because according to the norms of the 'civilized' world of the West, the principle of *Eminent Domain* is an essential, nay the key ingredient of modern State. The principle admirably suited and served the imperialist capitalist forces which ruled the Globe for more than two long centuries with no questions raised about this basic premise.

This take over of resources by the Raj ravaged the peasantry, the backbone of Indian economy through the millennia. The accompanying capitalist forces destroyed the fabled artisans through contrived market operations. The tribal tracts, during this phase of our history, were at the margin of the national economy. They were, therefore, spared the trauma of the imperialist capitalist *loot* and even genocide as was the fate of many a people similarly placed in other continents. There was more than enough in the plains to plunder. Therefore it was not worth the trouble for the invaders to move into the tribal tracts in the same style. Moreover, there was furious and dogged resistance from the tribal people themselves to any intrusion or advance into their territories.

The 'exclusion' of the tribal tracts from the main thrust areas of imperialist consolidation in India was continued as a policy till about the end of the Raj. This was possible because it did not mean much in terms of the imperialist-capitalist expropriation and even in terms of revenue to the State. Most of the people in these areas were still at pre-agricultural stage, practising shifting cultivation in the extensive forests. The forests were still not 'valuable' in economic terms, except in so far as they were a source of timber for sleepers for the railway net work which was established after the mid-nineteenth Century. The formal 'take over' of the forests towards the end of that century aimed at prevention of what was considered as 'destructive' use of forests and persuading the people to move out, or move on to settled cultivation. This interference was no doubt resented by the people. But it did help in a gradual change over to settled cultivation in many tribal areas. The more volatile groups like those in the North East were not touched at all through the policy of 'total exclusion'. They were allowed traditional *jhuming* unhindered. The situation in other tribal tracts was, however, a mixed one. The nature of mix depended on the local situation. Shifting cultivation as a system continues even now in the southern parts of Orissa, Agency Areas in Andhra Pradesh and also some small isolated remote tracts in M.P. and elsewhere. The principle of *Eminent Domain* in the tribal tracts during this period, therefore, remained notional. It did not have much impact on the tribal economy in general or even on their tradition of self-governance.

Paradigm Transformation

The collapse of *'exclusion'* principle, discussed earlier, and extension of general laws to the tribal tracts after independence as a matter of course made a vital difference with regard to the traditional command of the community over the resources in the habitat on which its members depended for their living. The moving spirit of general laws enacted by the British to rule India, as noted earlier, was the principle of *Eminent Domain*. In this frame, all resources in the territory of India formally belonged to the Crown. All rights concerning their use by any person in any form whatsoever, therefore, were ultimately derived from the Crown. They were subject to the laws enacted under the authority of the Crown and rules made thereunder. This frame remained unchanged after independence. The only change was the substitution of Crown by the Indian State, India that is *Bharat,* which formally came into being as the Constitution was adopted on behalf of 'We, the People of India' on November 26, 1949. The laws enacted before independence needed no fundamental change in respect of the basic premise concerning the command over resources simply because that *Eminent Domain* premise was retained as it was. The laws enacted thereafter also continued in the same mould for the same reason.

The collapse of the *'exclusion'* frame for the tribal tracts in a way signalled the raising of the thick old curtain which had kept the tribal scene

unaffected by the rest of the drama on the national stage. It brought into being, so far as the tribal people are concerned, all of a sudden, out of nowhere, the spectre of Omnipotent State, which had been kept out of their sight till then, notwithstanding the awesome halo of *Eminent Domain* which otherwise loomed large over the entire country.

What we witness here is a total paradigm transformation. The command over resources, which the tribal people hitherto enjoyed behind the *'exclusion curtain'*, passed over to the State without even a whimper. The tribal people, in the eyes of law after that change, were left with nothing but a big naught, which they could call their own. The only exception could be in respect of certain things which may have been scribbled in their favour by the scribes of the Raj, old and new. These scrolls, unfortunately, he was in no position even to decipher. Nevertheless, there was not much change for quite some time in the actual situation on the ground. The reason was simple. The presence of State was inconsequential and remained insignificant even after that change after independence in terms of formal administrative structures. Moreover, it did not acquire a vested interest during this phase in the potential resource endowment of these 'marginal' areas. The main concern of the State with regard to 'peace and good government' in the Scheduled Areas, therefore, remained focused on the two of the three illustrations under Paragraph 5 of the Fifth Schedule dealing with the same, that is, the protection of tribal land from their covetous neighbours and the wiles of money lenders.

The fact of paradigm transformation, which can be said to be the Original Sin, that too of the State's own making, was not even taken note of in the first two decades after independence. It admirably accommodated the State's self assigned role of directing, leading and guiding the 'great adventure' of national development. The Executive and even the Legislature, both at the Centre and in the States, ignored the real thrust of the Fifth Schedule. They proceeded as per the omnipotence premise of the State, guided mostly by considerations relevant for its new role concerning development on the national scene. There was not much concern about the implications of this role for the tribal people. In fact, the concerned authorities were more than satisfied with the performance of the rituals concerning the tribal people laid down in the Fifth Schedule and other provisions of the Constitution. They remained oblivious even about the fact of paradigm transformation.

Unexplored Potential of the Fifth Schedule

It is an irony that the dynamic potential of the Fifth Schedule implicit in 'peace and good government', the kernel of the grand schema of that Schedule, remained unrealised and even unexplored even as the tribal people entered the most eventful phase in their history so far. The processes of evolution and change in other societies spread over hundreds and thousands of years were getting telescoped into a time span of a few decades, sometimes even a few years, nay they were almost mutational in many

cases. As noted above, just two of the three illustrative points which reasonably encompassed the realm of 'peace and good government' in the pre-independence setting, that too in the frame of *'exclusion'*, were deemed to comprise *the be all and end all* of that realm even in the new phase when the tribal people were obliged to face a traumatic challenge jeopardising even their physical survival.

That 'peace and good government' comprise the kernel of the Constitutional Schema for the Scheduled Areas, is by itself highly significant. *Good government for the Scheduled Areas, in the context of our Constitution, can be said to comprise a system of governance which is nearest to the ideals and objectives set out in the Constitution as also to the natural rhythm of the tribal life embedded in their customs and traditions* The latter, that is, the nearness to the natural rhythm embedded in the traditions and customs of the people, is the key to the harmony between the System and the people and the foundation for abiding peace in the concerned area. Self-governance is the best bet for this proposition which is what the Raj realised very early in its rendezvous with the tribal people. It is obvious that peace cannot be purchased at the cost of Constitutional values and basic human rights. Equity within and protection against exotic intrusions can be accepted to comprise the twin pillars of the grand arcade of peace and good government of any regime, particularly so, for the Scheduled Areas.

The situation in the Scheduled Areas was ideal. The hoary tradition of community control over the resources was still in vogue. The land was not property but a means of living for the people. The differential between the highest and the lowest, the strongest and the weakest was not large. It was within the limits of tolerance as could be envisaged for a reasonable frame for an egalitarian social order. Moreover, pressure of population was not high. Therefore, there was virtual limitless scope for further accretions. The situation was particularly favourable, because the tribal people in many areas were moving out of shifting cultivation and adopting early forms of settled cultivation. This change over, for example, in Bastar converted the extensive tracts under shifting cultivation into luxuriant natural forests in less than a century. Moreover it yielded good agricultural lands for cultivation in the extensive plains and countless stream-beds in the undulating terrain.

It may be remembered that shifting cultivation is a way of life. It is nearest to the great ideal 'from each according to his capacity and unto every one according to his needs'. It takes a long long time for the associated values ingrained in the customs and traditions of a people to wear off in the processes of gradual or even mutational change. The System of self-government amongst the tribal people not only imbibed the spirit of these ideals but provided a frame for their continuance even in the changing situation. Thus, the customs and traditions of the tribal people can be said to comprise the best possible approximation to the national objective of

establishing an egalitarian social order imbued with the great values of justice, equality, liberty and fraternity set out in our Constitution.

Tribal Areas and the Rest : Striking Contrast

The situation in the rest of the country, on the other hand, was totally different. The tradition of self-governance at the village level was attacked[95] initially by the East India Company itself in its bid to maximise its revenue through direct levies on the *ryots*. The process continued with renewed vigour and in numerous other forms after the Queen decided to take over the reigns of the regime in India from the Company after the first war of independence. The community in the village went through a traumatic experience as the new frame of individual rights over land, that too in the feudal European mould, was forced by the Raj on the people who had been turned into humble subject people of the Great Empire.

Thus, our career as a Nation-State after independence began with tremendous handicaps. Dr. B. R. Ambedkar, the chief architect of Indian Constitution, warned in his memorable concluding address in the Constituent Assembly thus[96] :

> We must begin by acknowledging the fact that there is complete absence of two things in India Society. One of them is equality. On social plane, we have in Indian a society based on the principle of graded inequality... On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality... We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.'

The goal was set in clear and unequivocal terms in the Preamble of the Constitution. *Yet the Founding Fathers could not muster enough courage even to modify, let alone dismantle, the oppressive Imperial structure* which not only had created unprecedented iniquity in the economic life of the people but had provided an impregnable shield of the formal State structure for its continuance and even accentuation in perpetuity. It is a matter of fact with serious implications that the Founding Fathers really did not represent the people.[97] *The Constitution was not a child of revolution.*[98] *It was a mix of idealism of the elite, pragmatism of the standard bearers and ambivalence amongst those who found themselves enthroned as Inheritors of the Raj.* It is a pity that it could not even capture the spirit, which had moved the multitude in lakhs of villages, which still comprised the real India. Therefore, what we have in real life is the ritual of obeisance to the great ideals set out in the Constitution without touching the core of the imperialist capitalist frame.

Directive Principles : Differing Implications

The irony is that the ideals set out in the Constitution were formally designated as the Directive Principles of State Policy. It was presumed that the leadership of the State will be in the hands of people having full faith in those principles. They will also be fired by the zeal to see the national life transformed accordingly. But that was not to be. The State became subservient to the Inheritors of the Raj including its powerful steel frame itself, which had acquired a vested interest of its own in the *status quo* . The people remained in the dark even about the nature of the State and also about the real nature and the moving spirit of the national objectives. Even some of the simple, though vital Constitutional directives, such as, uniform and compulsory education for all children upto the age of 14, prohibition of use of intoxicants, have not been pursued with honesty, let alone with a sense of mission.

There was no worthwhile counter-vailing force from the people's side on account of their ignorance and also the great confusion which had been created by the din and dazzle of development. The people have been led into the belief that what obtains is a part of the natural process; that a *heaven on earth* awaits them beyond the treacherous gorge; that the abysmal present for the countless many is the price which some one has to pay. The sad part is that there was not even an allusion to the truth that the *heaven on earth,* which could be a reality for a few, is simply not attainable for most of the people. In the pursuit of selfish goals by all those who mattered during this phase, equity was relegated to the secondary position, nay it got obliterated from the national agenda. Now only its 'grin' persists which may also fade out sooner than later. Expropriation of the masses, unrelenting and limitless, stands legitimatised in the name of progress. The upward mobility, which is notional and unreal in the overall national context, is portrayed as real and tangible, as a solid proof of the 'unreal', namely, that the grand objectives are attainable. The disgruntled, the dissidents and even the deviants are cleverly co-opted by the pernicious System. Crumbs are thrown intermittently amongst the so-called poor in a calculated sequence and style, to keep the simple unsuspecting people engaged in dog-like fights in perpetuity.

Notwithstanding the above quoted malevolent aspects of the national scene and the imperial imprint of its institutional design, the Guiding Principles along with the Fundamental Rights did create a benign niche within the Constitution which could be used in a favourable setting for advancing the Constitutional values and objectives. The dynamic interpretation of these provisions and occasional interventions by the Judiciary, an integral part of the omnipotent State, whose intensity and frequency have been fluctuating and have decreased significantly in recent years, has played a notable role at least in retarding the rate of running down of the System and mellowing its anti-people stance. The Judiciary to some extent remained unafflicted by the humdrum of politics and compulsions of the moment

which have badly infected even the permanent establishment of the State and rendered it dysfunctional. This divergence between the ideal and the real gives rise to unwonted situations such as, the unconcerned, erring and even reckless executive being reminded by the Courts of its role and responsibility; the unkempt, the ignorant, the slimy and the depraved leaders of all hues being told by some odd Judge with concern about the basics and fundamentals of the Constitution under which they are supposed to have sworn to function.

The growing dissonance between the assumed role by the State and its executive, on the one hand and its Constitutional mandate, on the other, may be noted and even lambasted in the Courts of Justice. The radical pronouncements about the Right to Life with Dignity, the Right to Development, supported and supplemented by equally radical, well-meaning and benign Conventions, International and Universal, have had their share in influencing the State and its minions, but mostly by way of mild checks - that too *post facto,* and by way of notional retrievals from the precipice. The imperceptible and irresistible processes of deviance from the charted path remain rather uninfluenced and unaffected. They are responsible for the 'anti-march' of the nation even before the very first steps in the right direction could be taken after independence.

Juxtaposition of the Iniquitous and the Egalitarian

The general situation at the national level, thus, presents a queer mix of light and shade, hope and despair, march and 'anti-march'. It is amenable to be interpreted and described according to the perception of the viewer. It may be 'all light' for some like the ruling elite and 'pitch dark' with not even a single ray of light anywhere for those facing the severe backlash of the so called development. As we move on to the tribal areas, the mix of light and shade gives way to what can be described as a DARK canvass with varying shades of dark, darker and the darkest. The choice is between evil and lesser evil because the prevailing order itself had become a synonym of evil after the iniquitous System was thrust on these areas after independence. This superimposition was effected through the magical mutation of the legal frame. The tribal areas got flooded with exotic laws and institutions after the collapse of the *'curtain'*. Even the directors of the stage did not realise what they had done, let alone understanding the subtle implications thereof in the long run and even in the immediate context.

What we have in the tribal areas, as a result of this callous handling of tribal affairs, is the anomalous juxtaposition of the iniquitous national system and the egalitarian tribal system in which the former has the halo of the authority of the State while the latter in dubbed as decadent or at best idealistic nostalgia out of tune with the harsh reality of the day. That the idealistic nostalgia of a people is the best approximation to the ideals set out in the Constitution itself is of no concern to the Inheritors and even the *pundits* of the modern System. The old order must give way to the new

order of iniquity, according to even the so-called radicals. Only then can the great miracle of *rising from the ashes* will occur as the nation moves along the grand avenue of egalitarian social order.

Thus, good governance, which is inbuilt in the traditions and the customs of the tribal people, had to give way to a System which has nothing much to commend in terms of the great values enshrined in the Constitution. In fact, what has been thrust on these areas was a malfunctioning imperial order with all authority and no responsibility or accountability as perceived from the people's side. In the mean time, the national economy itself was charting out a new path with the avowed objective of structural transformation from agriculture to industry as its main thrust. *This change in the national frame brought the hitherto marginal areas inhabited by the tribal people, with the 'exclusion-curtain' around to add, right to the centre of the new scene with not even a paper veneer around.* The resource-base of the subsistence economy of the tribal people, which hither to had no value for the outside world, got transformed into the highly coveted treasure-house. It contained almost all that was needed by the modern industry. The traditional command of the tribal people got eclipsed with the regal march of the State with its aura of *Eminent Domain.* The tribal people in this frame had no rights except some favours which may be conceded by the omnipotent State.

Growing Confrontation : Varying Response

(i) Early Rumblings

The impact of the early entry of the State into the tribal areas under the umbrella of exotic laws was rather mild on two counts. *Firstly,* there was sufficient space for the tribal people to retreat and disperse because in that phase, the new managers of extensive forest and land resources were rather few and far between. Those who reached there were not even clear about their bearings in the unknown territories of the *Wild. Secondly,* the State itself was keen on projecting itself as a benevolent new comer with a mission. The mission was to develop the area and also to initiate the innocent tribal people in the mystique of the modern world. Moreover, the major role in the new industrial thrust was assigned to the Public Sector in pursuance of the Directive Principles of State Policy concerning the use of community resources. The objective was to subserve common good and guide the economic system in such a way that there was no concentration of economic power as envisaged in Article 39(2) and (3) of the Constitution. These enterprises under the tutelage of the State could not afford to turn a blind eye to the people's side notwithstanding the draconian powers which they could wield under the law.

(ii) Sporadic Struggles

This honeymoon, by its very nature, could not last for long as the State gained confidence in asserting its authority and the tribal people were perplexed as they faced unprecedented squeeze from both sides. On the

one hand, the new development thrust gave rise to a torrential inflow of people who not only were well-adept in the ways of the modern System but could depend on the minions of the State as their allies. On the other hand, the tribal people had to struggle with a formidable wall, which in the mean time had risen behind them as the new System consolidated its command over land and forest. Even their own inner defence, which had sustained them through the ages with the community in total command, was getting weakened under the impact of so-called development. The individual tribals were sought as allies by the State in the name of education, advancement and sharing of power at different levels. The growing differential and emerging contradictions gave rise to simmering discontent throughout the tribal area. It culminated in confrontation and even open revolts in many areas.

(iii) Iniquity Legitimised

It is unfortunate that while the situation was deteriorating in the tribal areas, the State with its new found role of development, did not care or perhaps could not dare to go into the root causes of the growing confrontation and disruption of peace. Maintenance of peace and good government was the bounden duty of the State under the Fifth Schedule. Nevertheless, as a rule, action on the part of State followed only when peace got disrupted, that too as a fire-fighting operation for a while. These perturbations were deemed to be isolated events. Therefore, they were naturally treated as law and order problems. *The irony is that action was taken in favour of an order which is iniquitous, against which the people were revolting.* This, no doubt, is the case in other parts of the country as well and is a nation-wide phenomenon. But the two situations, that is, the general national scene and the tribal scene, are totally different. So far as the general national scene is concerned, the iniquitous State, as it is, has been accepted as a norm. The freedom struggle, which was directed against not only the foreign rule but also the Imperialist System created by them, got subsumed in the grand spectacle of transfer of power. The fight against the System faded out as the *'change of guards'* was taken as the *'change of System'*, or at least as an insignia of reining the Imperial System effectively.

The dawn of independence, thus, legitimised the iniquitous order. The erstwhile Imperial System assumed the solemn role of perpetuating the same order. The urges of the people as citizens of a democratic republic wedded to the ideal of egalitarian social and economic order in this realm cannot but be deemed as violations of law to be dealt with accordingly. The high principles of a socialist democratic republic which *We, the People of India,* had resolved to establish, have remained entrapped in the Grand Big Book known as the Constitution of India. For the people in general, this chain of events presented a no-change scenario so far as the System was concerned. *In fact, the focus in their perception had shifted from the intrinsic iniquitous nature of the System to the malfunctioning of that System.* The imperial neutrality in the course of time gave way to sectional and personal gains and aggrandisement in the *melee* of development, in whose name and for whose cause everything has been deemed as fair and right.

In the tribal areas the situation was totally different. These areas witnessed a sea-change after independence instead of 'no-change' scenario elsewhere. The tribal people were simply not prepared to accept the new System which denied them two basic things, that is, self-governance and command over resources. The confrontations between the people and the State and even revolts by the people against the State followed. They, however, have been ascribed to overt causes without going to their roots. Praveer Chandra Bhanjdeo in Bastar, Antony Murmu in Santhal Parganas and Naxals in Andhra Pradesh are mere expressions of that deep rooted dissonance and rupture which have been caused by violations of the norms set by the Fifth Schedule of the Constitution in the crisp formulations concerning 'peace and good government'. Unless the two basic ingredients concerning self-government and command over resources are reasonably satisfied, peace and good governance cannot but remain illusory.

Amends under Pressure

(i) Land Regulations of Andhra Pradesh

While Bastar became quiet after liquidation of Praveer, but not so the adjoining tribal tracts in Andhra Pradesh. These areas have been witnessing wave after wave of tribal resurgence which could not be handled as a law and order situation. The State, therefore, was obliged to look at some of the basic causes, particularly the resources issue. It was clear that command over resources got eroded because of the extension of general laws to the tribal areas as a matter of course and the failure of governments to make use of the potential of the special provisions in the Fifth Schedule. The Fifth Schedule is an unique provision, which comprises[99] 'an integral scheme of the Constitution with directions, philosophy' in which 'the anxiety is to protect the tribals from exploitation and to preserve the valuable endowment of their land for their economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity of their person and our political Bharat.'

So far as the issue of land in concerned, it has been dealt with under two of the three specific items in sub-paragraph 5(2) of the Fifth Schedule. Suitable regulations can be made under clause (a) to prohibit or to restrict the transfer of land by or amongst the members of the Scheduled Tribes and under clause (b) to regulate the allotment of land to members of the Scheduled Tribes in such areas. Most of the States including Andhra Pradesh have been making Regulations under the first provision in clause (a) of this sub-paragraph. These mechanical exercises unfortunately have proved to be inadequate because of legal lacuna and reckless manipulation by their unscrupulous neighbours. A comprehensive frame, however, came to be provided by Andhra Pradesh Government in 1970 in the wake of serious unrest in the Agency Areas. It will be useful to peruse the same in some detail.

In the first instance Section 2 (g) of the A.P. Scheduled Areas Land Transfer Regulation defines the term 'transfer' comprehensively. It covers[100]

'mortgage with or without possession, *lease,* sale, gift, exchange or "any other dealing" with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, *lease,* sale, gift, exchange or *other dealing.* The definition of transfer is a comprehensively wide definition of transfer except testamentary disposition by a tribal to another tribal so as to effectuate the prohibition of transfer of immovable property to any person other than a Scheduled Tribe or a cooperative society composed solely of members of the Scheduled Tribes.

Section 3 of the A.P. Regulation is as under :

3. ***Transfer of immovable property by a member of a Scheduled Tribe*** - (1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts *by a person,* whether or not *such person* is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a Society, registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a *person* who is not a member of Scheduled Tribe, shall be presumed to have been acquired by *person* or his predecessor in possession through a transfer, made to him by a member of a Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent, the Agency Divisional Officer or the prescribed officer, as the case may be, may, by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961) and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed.

(2) (a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or *suo moto* decree of ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferrer or his heirs.

(b) If the transferrer or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or the prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a society (registered or deemed to be registered under any law relating to co-operative societies for the time being in force in the State) composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government.

(ii) Courts Concur

So far as the transfer of immovable property between a member of the Scheduled Tribes to a non-Scheduled Tribe is concerned, *it is a settled law that such a transfer is null and void.*[101] But the Andhra Pradesh Regulation goes one step further and prohibits transfer of property by a non-tribal in favour of any one other than a tribal. The validity of this stringent regulation has been questioned in the Courts of Law on several counts. But the Courts have refused to intervene in these matters and have not accepted the plea of violation of the fundamental rights of the concerned persons. They have perceived the issue of transfer of land in the Scheduled Areas in its historical perspective. It is clear that the entire resource base in these remote areas has been under the command of the tribal communities. It is only with the opening up of these areas that the non-tribals came in and acquired lands, taking advantage of the innocence of the tribal people and infirmities of the legal frame. The Regulation, therefore, aims at undoing this historical injustice.

The constitutionality of this provision has been upheld by the Supreme Court on the ground[102] that —

The Regulation aims to restore the lands to the tribals which originally belonged to them, but passed into the hands of non-tribals. *It would be unjust, unfair and highly unreasonable merely to freeze the situation, instead of reversing the injustice and restoring the status quo ante. The non-tribal economic exploiters would get no immunity and not be accorded a privileged treatment by permitting them to transfer the lands and structures, if any, raised on such lands to non-tribals and to make profits at the cost of the tribals.* Section 3, though it causes hardship to the non-tribals, equally, alleviates hardship of the tribals. *The Court must keep in mind the larger perspective of the interest of the tribal community in its entirety; the restrictions cannot be condemned as unreasonable.*

Similarly in another case the Court observed[103]:

(1) Within the Scheduled Areas of both Telgangana and Andhra regions the land was entirely in occupation of different tribal communities. The area was an inaccessible tract of land covered by forests and hills. These tribal communities were in occupation of lands and lived by shifting cultivation and gathering whatever produce that was available.

(2) The non-tribals who arrived in these areas late in the 19th Century in certain areas and the early 20th Century in certain other areas found the tribals who were in occupation of these lands an easy prey for the schemes

of exploitation. The non-tribal were lending money to the tribal communities and taking the land belonging to them as security though nothing was taken in writing from a tribal. The rates of interest charged ranged between 25 to 50 per cent and in certain cases even 100 per cent. The tribals who were traditionally honest and who were simple in their thought and habits fell an easy prey to the schemes of the non-tribals.

It was observed by several committees that the non-tribals were able to find ways and means to circumvent the provisions of Regulation 1 of 1959 by entering into *benami* transactions and other clandestine transactions with unsophisticated tribals. It is absolutely necessary to create conditions for peace and maintain peace and prevent the new non-tribals from settling down in the Scheduled Area. If alienation is permitted to the non-tribals there is a danger of large-scale exploitation by the new non-tribals again with the result peace will be disturbed in that area."

(iii) Shifting of Onus in Madhya Pradesh

Another notable measure to undo the historical injustice due to ignorance of the tribal people and legal infirmities has been taken, for example, in Madhya Pradesh. The premise is that the possession of land by the member of a Scheduled Tribe has to be taken in its stride and needs no special affirmation on the tribal's part. But a non-tribal, by the very fact that he has moved into the area from outside, has to establish his claim to the land which may be in his possession. In their case, therefore, possession of land by itself cannot be presumed to be regular in accordance with law unless it is proved. The onus that the land occupied by the non-tribal has been obtained legally is thus shifted to the non-tribal. Thus, Sec. 170-B of the M.P. Land Revenue Code provides[104] as in the following—

> **170-B.** ***Reversion of land of members of aboriginal tribes which was transferred by fraud***
>
> (1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (b) of section 164 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.
>
> (2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid, revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

(iv) Community *versus* the State : Equations Redefined in Andhra Pradesh

While the explicit provisions concerning individual rights over land in the Scheduled Areas have increasingly got aligned with the scheme of the Fifth Schedule, the major issue of the command over resources by the community, as a natural or *swayambhu* right *vis a vis* the State's authority over the same under the aura of the principle of *Eminent Domain* did not receive much attention. The dispossession of the tribal people and forced displacement from their habitat itself gradually gathered momentum and has become a major issue concerning flagrant violation of the scheme of peace and good government of the Fifth Schedule. Yet, there has been deafening silence on this front for two reasons. *Firstly,* the State, the supreme protector of tribal interests, was itself the violator of that scheme in its role as promoter of development in all spheres of national life. The former role was ignored by the rulers in the great confusion which has prevailed on the issue of equity and development at least in the early transitional phase. *Secondly,* the action of the State in respect of the use of community resources under the aegis of Public Sector Enterprises could be reasonably construed to be in furtherance of common good as envisaged under Article 39 (2) and (3).

But the situation changed with the entry of private sector. Could the private enterprises be treated *at par* with public sector enterprises in respect of the command over resources of the community in these areas? The legal forms assumed by various enterprises created avoidable confusion. Even public sector enterprises are deemed to be a 'person' under the law. They are, therefore, *at par* with any other person including a private enterprise. In this confusion, while the law in respect of land was being streamlined in keeping with the scheme of the Fifth Schedule, a veritable flood gate got opened up in the name of promotion of industries for tribal development. Again, in the wake of unrest in the Agency areas of Andhra Pradesh, the Government of Andhra Pradesh was forced to realign its law on mining leases as well with reference to the scheme of the Fifth Schedule.

The Andhra Pradesh provision in this regard is clear and simple. Section 11(5) of the Mines and Minerals (Regulation and Development) Act, 1957 introduced by a State Amendment simply prohibits grant of mining lease in Scheduled Areas in favour of the non-tribals. It reads as under :

> " Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled Areas to any person who is not a member of the Scheduled Tribes:
>
> Provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government or to a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act 1964 which is composed solely of members of Scheduled Tribes.

That such a provision has been made only in Andhra Pradesh and no other State in the country shows that neither the State Governments nor the Union Government have thought it worthwhile to take necessary meas-

ures to make the scheme of the Fifth Schedule explicit with a clear frame to meet the issues of transition which the tribal people have been facing in their respective areas. The various Governments have been responding to the crisis of confrontation only. That the tribal people are facing the worst crisis in their history, some of them being trapped in situations in which even their physical survival is at stake, is no body's concern. It is only the Courts which have been passing their judgements, which ironically are related to those areas alone where the people have been able to launch movements and create 'crisis of confrontation' as in Andhra Pradesh.

The real purpose of a protective system is to provide protection unsolicited, nay in anticipation of the crisis, no one except the aggressor realising that a protective system exists. It is sad and flagrant violation of the spirit of the Constitution as well that many extensive tribal tracts are being ravaged in the name of development simply because the silent cries of the simple tribal people facing that onslaught are not reaching out and remain unheard. For example, the entire Jharkhand region spanning across the borders of Bihar, Orissa and Madhya Pradesh and even the tribal tracts in Chhatisgarh have been caught in this whirl with no questions asked.

Fifth Schedule: Intent Made Explicit

(i) Community Command over Resource

This position has changed rather drastically in terms of making the scheme of the Fifth Schedule explicit after the enactment of the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996. Its broad outlines have been discussed in Chapter 5. Even at the risk of repetition, it may be noted that Section 4 (d) of this Act provides that

> "(N)otwithstanding any thing contained in Part IX of the Constitution,... every Gram Sabha shall be competent to safeguard and preserve the traditions and the customs, their cultural identity, community resources...'

Under clause 4 (m)(iii), the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe has been entrusted to the *Gram Sabha* and *Panchayts* at the appropriate level. Appreciating the spirit of the Extension Law the Supreme Court in *Samatha* case discussed above has observed[105] :

> 'It would indicate that the tribal autonomy of management of their resources including the prevention of alienation of land in the Scheduled Areas and taking of appropriate action in that behalf for restoration of the same to the tribals, is entrusted to the Gram Panchayats'.

And the Gram Panchayats in the Scheduled Areas are not the last and the lowliest in the Panchayat Raj institutions which remain an adjunct of the powerful System of the State. It is concerned, nay obsessed for obvious reasons, with issues of no real concern to the people. The Extension

Law has transformed this state. Gram Panchayat in the Scheduled Areas is now the chief executive body of the Gram Sabha, the general body of the Little Republic, answerable to the Gram Sabha and Gram Sabha alone, functioning 'under the general superintendence, control and direction of the Gram Sabha.'[106]

With the *competence* of the village community in the form of *Gram Sabha* to manage its resources being enshrined in the Constitution, a set of new equations getting established between the people and the State is a natural corollary. Once the people are in command the State cannot claim *Eminent Domain* in respect of the community resources which has remained unchallenged hitherto for the simple reason that the community remained unrecognised by and alien to the legal frame created by the British. All those laws which draw upon that *Principle* will have to be realigned now if the spirit of the Constitution as reflected in the Extension Law has to be honoured. Some changes have been mandated in the Extension Law itself. For example, the draconian law about acquisition of land of 1894 is sought to be made still more draconian in general through an amendment by the Union Government [107]. Yet, in the face of the specific provision under section 4(i) in the Extension Law, the amended Acquisition Law in the case of the Scheduled Areas cannot escape incorporating a provision for consultation with *Gram Sabha* and *Panchayats* at appropriate level. The management of water bodies has been vested in the *Panchayat* while that of minor minerals is now subject to consultation with the *Gram Sabha.*

A question can be raised here about the nature of consultation between the State and the *Gram Sabha* which comprises the people. It is a truism to state that so long as the State is sovereign, its authority cannot be made subject to the decisions of any other authority whatsoever unless the decision of that authority has been taken on behalf of the State itself in terms of the powers which may have been delegated to or devolved on that authority under an appropriate law. Similarly, the government may be mandated to consult some authority, Constitutional or Statutory. But such consultation would only mean tendering of advice by the concerned authorities in the form of recommendations and their consideration on the part of the Government for suitable action, if any. *No recommendation of any authority whatsoever can be binding on the State. But the question now is whether the same position will hold even in the case of consultation with the Gram Sabha which comprises the sovereign people themselves? This consultation is qualitatively different from consultation with any other authority. It is like consultation with or advice of the father or the mother in a family.*[108] *The advice of a father or a mother cannot but be a virtual order which has to be obeyed.* The use of the term 'shall be consulted' in the Extension Law merely resolves the dilemma of the draftsman who is still bound by the overbearing principle, *the Principle of Eminent Domain*, the very foundation of the modern State.

(ii) Adaptation of Laws : An Urgent Agenda

The various laws of the Centre as also the States are being suitably realigned with the scheme of the Fifth Schedule which has been made more explicit and also reinforced by the provision of Part IX concerning Panchayats as specially adapted for the Scheduled Areas. The Madhya Pradesh Panchayat Raj Act has further elaborated the provision under Section 4 (d) of the Extension Law concerning management of community resources. Section 129 C of the said Act is as follows [109]:

> **129C.** ***Powers and Functions of Gram Sabha.***
>
> The Gram Sabha, in the Scheduled Areas, shall also have the following powers and functions, namely :
>
> ...
>
> (iii) *to manage natural resource including land, water and forests* within the area of the village in accordance with its traditions and in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws for the time being in force.
>
> ...

The competence of the community in the form of *Gram Sabha* under this provision to manage all natural resources including land, water and forest is unequivocal. How the *Gram Sabhas* will do it is also clear. The customs and traditions of the community are to be the sole guide in this case. It means that the people will know what they are talking about. They will also know what they are supposed to do, as the shadow of exotic laws mallows, if not fades away altogether, with the realisation of the pre-eminence of their own tradition in the new frame. The only condition in this case is that their action has to be in consonance with the provisions of the Constitution and the *spirit* (and not the letter!) of other relevant laws for the time being in force.

(iii) Traditions and Customs

As we have underlined in our earlier discussion repeatedly to clear the confusion and make the point unequivocal, the customs and traditions of the tribal people comprise the best possible approximation to the goals and the values set out in the Constitution. It is the laws of the land with imperial imprint which are violative of the real spirit of the Constitution. It is these incongruous laws which, in the absence of any specific mandate for resolution of such anomalies and dissonance, have been responsible for continuing confrontation between the people, who may be acting according to their tradition, and the State, as its officials proceed to enforce the incongruous laws.

The fact is that the traditions and the customs of the tribal people are remnants of the great Indian tradition of republic-like structure at the village level which was in vogue in many areas until the advent of the British in India. The destruction of that System was a part of the global ravaging of

the indigenous Systems almost in every country which came under the sway of Imperial powers. The Founding Fathers did resolve to restore that system yet the successive Governments defaulted, nay the Ruling Elite committed the unpardonable sin of deceiving the people. The belated action of the Government, that too in the limited reach of the Scheduled Areas, is the first step towards undoing that great injustice. It should inform all parts of the country without any delay, may be, with suitable adaptation in keeping with the local situation.

I.L.O. Convention

It may be too early to hazard a statement that the Extension Act reflects the changing national ethos. Nevertheless it is pertinent to note that it goes along with the provisions of the 1989 I.L.O. Convention concerning the rights of the tribal people. This convention has not been ratified by India because of the way the terms 'indigenous' and 'tribal' have been defined. Nevertheless the spirit of the Convention is unexceptionable . That spirit is implicit in the provisions of the Fifth and the Sixth Schedules. The Convention calls upon the Governments in relation the issue of 'land' (a term taken to cover the entire environment) of the concerned area[110]-

(i) to respect the relationship of the tribal people with the land or the territories which they occupy or otherwise use,

(ii) to recognise their rights of ownership and possession over the land which they traditionally occupy,

(iii) to safeguard their rights to lands not exclusively occupied by them but to which they traditionally have had access for their subsistence and traditional activities,

(iv) to pay special attention to the situation of nomadic people and shifting cultivators in pursuance of the safeguards in (iii) above,

(v) to safeguard the rights of the tribal people concerning the natural resources which include their right 'to participate in the use, management and conservation of these resources',

(vi) to establish procedures for consultation with the concerned people before undertaking any programme for the exploration or exploitation of any resources in the concerned land and territories, and

(vii) to remove not the tribal people from the lands which they occupy except

  (a) with their free and informed consent, and

  (b) in case such consent is not forthcoming the relocation to be pursued through appropriate procedures including public inquiries which provide the opportunity for effective representation of the concerned people.

The Role of State after Extension Law

With the management of all natural resources, including land, water and forests, passing on to the community, the role and responsibility of the State officials get totally transformed. While the people deliberate within the known realm of their own tradition and take necessary decisions to act accordingly, the officials have to place before them the spirit of the State laws on the subject so that it could be taken due note of by the people in the process of decision making. The areas of conflict are bound to be minimal, given a clime of understanding, good will and good faith on both sides. The community, by its very nature, must act in furtherance of common good, keeping the well-being of generations to come upper most in the new frame.

The deviations in the perception of the community can arise only if personal interests are pressed or exotic forces intervene. The personal interests can be expected to be contained in the open forums of village assemblies. There is no other alternative since that is the highest forum in a democratic polity. However, the position is different in relation to the exotic forces. The community has nothing by way of guidance in its tradition to deal effectively with these forces, particularly of the complex modern world of money and market. It is here that the advice of the representatives of the State becomes not only relevant but vital. The community should, and the chances are that it would, take the same into consideration. In case some limitations were to be imposed under the law on the community's discretion in its dealings with exotic forces that would be perfectly in order and within the frame work of the Fifth Schedule whose primary purpose is to ensure that the State does provide effective protection to the tribal people.

The Extension Law takes due note of the possibility of the laws which are incongruous with the spirit of the Fifth Schedule provisions, not being adapted by the concerned States or even the Central Government. For example, the only State which so far (March 2000) has amended[111] all laws involving acquisition of land for public purpose is Maharashtra. It has amended the Bombay Village Panchayat Act, the Maharashtra Zilla Parishad and Panchayat Samiti Act, the Maharashtra Industrial Development Act, the Maharashtra Housing and Area Development Act and the Maharashtra Irrigation Act. The Union Government has been considering an amendment of the Land Acquisition Act only. There are many other Acts like the Coal Bearing Act and the Mining Act, which involve transfer of land in the Scheduled Areas. The provision in the Extension Law is simple. Any law, to the extent it is inconsistent with the provisions of the Extension Law, 'shall continue to be in force until amended or repealed by a competent Legislature or other competent authority, or until the expiration of one year from the date on which this Act receives the assent of the President.' Many Laws, which fall in this category, have not been amended so far.

The implications of this non-action on the part of the States and the Union are clear. The President had given his assent to the Extension Law on December 24, 1996. Therefore, all laws to the extent they are inconsistent with the provisions of the Fifth Schedule as reinforced by the Extension Law, are deemed to have become inoperative with effect from 24.12.1997. On this point, the Central Government has formally cautioned[112] the State Governments in clear terms as the time limit was coming to a close :

> 'It is quite possible that the Gram Sabhas start exercising their legitimate claims over the natural resources after the cut off date irrespective of the status of State Legislations. They will be justified in doing so as the Central Legislation gives them these powers irrespective of the fact that States have not been able to come up with suitable legislations in time. ...'

What has been stated about the State laws is equally valid for the Central laws concerning the command and the use of natural resources. The village community is now *competent* to manage the natural resources in accordance with its traditions and customs and the spirit of the Constitution disregarding the provision of any other law for the time being in force, which may be incongruous with its traditions or the Constitutional values.

Chapter 7

State Estopped

While the scheme of the Fifth Schedule is being made explicit and operational as the process of adaptation of laws has begun, the fact is that the hangover of the incongruous System remains. It is unfortunate that there is yawning gap even otherwise between the ideal and the real, particularly when it comes to the issues concerning the weaker sections of the community. The neglect, ambivalence and non-action have been responsible for the chequered career of the Fifth Schedule over the past fifty years.

The most sensitive and also the most vital issue, which has not even been seriously considered at any level so far relates to the State's own perception about the command over and also the use of natural resources. While the State has shown some sensitivity about injustice to the tribal people at the hands of their cunning 'neighbours', its own authority to deal with the natural resources, the way it deems fit under the aura of *Eminent Domain,* has been taken for granted in the Scheduled Areas as well on the same lines as any where else in the country. As we have discussed in detail earlier, the principle of *Eminent Domain* which was thrust on the country during the British Rule, was retained as it was even after independence. The adoption of the Constitution dedicated to the ideal of a socialistic republic and egalitarian order made no difference. In fact, the tribal tracts were spared to some extent the treacherous logic of the rapacious Imperial System before independence. The tragedy and also the irony is that that very treacherous logic became manifest in the Scheduled Areas after independence in the wake of the collapse of 'exclusion principle' with no questions asked. In many cases, the State itself has not been able to rise above the Imperialist legacy and to change over to a new style in harmony with the Constitutional objectives and values reinforced by the global consensus, *albeit* so far largely in principle as an ideal, about the goals of human endeavour.

The fact that many actions of the State, so far as its own authority is concerned, have been discordant with the spirit of the Fifth Schedule has been discussed earlier particularly in the light of the Reports of the Commissioner for Scheduled Castes and Scheduled Tribes submitted to the President under Article 338 of the Constitution. Moreover, many such actions have also come under judicial scrutiny from time to time. While dealing with these cases, the scope as also the thrust of various Constitutional provisions have been spelt out and clarified in various pronouncements by the Supreme Court and also some High Courts. The acts of indiscretion committed by the Government of Andhra Pradesh before the scheme of the Fifth Schedule was made quite explicit in the Extension Act, particularly in relation to community's command over resources, has been commented upon

at length in the *Samatha* case by the Supreme Court.[113] As we have noted earlier the Honourable Court has also used the opportunity to place the provisions of the Fifth Schedule in the larger perspective of the Constitution as also International Conventions which together comprise the basic frame of a truly egalitarian world view.

Let us begin with the basic frame of the Constitution itself. That We, the People of India, have solemnly resolved to constitute India into a Socialist Democratic Republic', has been stated in the Preamble of the Constitution itself. In this context, the Honourable Supreme Court have observed[114] that "establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. *The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism.* The word "socialist" used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate Articles seek to establish, i. e., to reduce inequalities in income and status and to provide equality of opportunity and facilities". *(Emphasis Author)*

But these provisions by themselves comprise undefined premises and uncertain application thereof. Can we afford to consign the fundamental Rights and Directive Principles to the limbo of undefined premises and uncertain application? 'That will be a mockery of them all' is the clear verdict of the Supreme Court. While dwelling on the scope of Article 21 concerning the right to life the Hon'ble Court held that 'right to life enshrined in Article 21 means something more than mere survival or animal existence. *The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21.*'[115]

Our country has reaffirmed the faith in, as also accepted the obligation of taking necessary measures for the realisation of the said objectives and imbibing the said values in national life with the ratification of the "Right to Development Convention" adopted by the United Nations. The 'right to development' by virtue of Article 1 of the said Convention becomes an inalienable human right. Clause (3) of this Convention provides that the States shall have *"the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom".*[116]

The Hon'ble Supreme Court has drawn attention[117] to the other specific provisions of the Convention such as Article 6(2) which 'reassures that *human rights and fundamental freedoms are indivisible and interdependent ; equal attention and urgent consideration should be given to the implementation, promotion, and protection of civil, political, economic, social and cultural rights (emphasis supplied)* and Clause (3) thereof en-

joins that "the States should take steps to eliminate obstacles to development." Article 8 enjoins that " the State should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure *inter alia* equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income". It is also provided that "an appropriate economic and social reform should be carried out with a view to eradicating all social injustice". Article 9 declares that "all the aspects of the right to development set forth in the present declaration are indivisible and interdependent and each of them should be considered in the context of the whole". Article 10 of the Convention concludes and reminds the State of its duty *"to take steps to ensure them the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national level".*

"The Directive Principle in Part IV of the Constitution, thus, are forerunners of this International Convention. Accordingly 'India being an active participant in the successful declaration of the Convention on Right to Development and a party signatory thereto, it is its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of, and to protect the social, economic, civil, and cultural rights of the people, in particular, the poor, the Dalits and Tribes as enjoined in Article 46 read with Articles 38, 39 and all other related Articles read with right to life guaranteed by Article 21 of the Constitution of India. By that constant endeavour and interaction, right to life would become meaningful so as to realise its full potentiality of "person" as inalienable human right and to raise the standard of living, improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality and fraternity, the trinity are pillars to establish the egalitarian social order in Socialist Secular Democratic Bharat Republic'.[118]

Moreover, 'all human rights are derived from the dignity of the person and his inherent worth. Fundamental Rights and Directive Principles of the Constitution have fused in them as fundamental human rights as indivisible and interdependent. The Constitution has charged the State to provide facilities and opportunities among the people and groups of people, to remove social and economic inequality and to improve equality of status. Article 39 (b) enjoins the State to direct its policy towards securing distribution of the ownership and control of the material resources of the community as best to subserve the common good. *The founding fathers with hind sight, engrafted with prognosis, not only inalienable human rights as part of the Constitution but also charged the State as its policy to remove obstacles, disabilities and inequalities for human development and positive actions to provide opportunities and facilities to develop human dignity and equality of status and of opportunity for social and economic democracy. Economic and social equality is a facet of liberty without which meaningful life would be hollow and mirage'.*[119]

So here is a call for a long march from the existing iniquitous order to an egalitarian order imbued with the great Constitutional values. 'The Preamble directs the centres of power, Legislature, Executive and Judiciary, to strive to set up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare Society under rule of law. Though it is a long march, but during the journey to the fulfilment of goal *every State action including interpretation, whenever taken,* must be directed and must be so interpreted as to take the society towards establishing egalitarian socialist State, the goal'.[120]

But the situation in the tribal tracts, as we have been discussing, is just the reverse. Here is an egalitarian social order which is running down. It is not running down under its own weight. It is running down because the community is not able to meet the challenge of exotic forces, many of which have enjoyed implicit support of the State. The irony is that the same State is responsible for providing the needed protection to the tribal people, a responsibility which it has largely failed to discharge. But the adverse forces now have assumed catastrophic dimensions as the State itself has become an interested party as promoter of the so-called national development. The simple societies which were largely dependent on the natural resources, land, water and forest, are now facing a superpower adversary in the form of State which, in their perception, has appeared from no where and is claiming total command over these resources. The egalitarian order of the tribal people, thus, has got transmuted, at least in its legal manifestation should one ignore the Fifth Schedule and other Constitutional provision which reinforce it, into the worst form of feifdom. The proud tribal has become a mere serf, and worse, because of his total ignorance about the new ways of life. He is totally at the mercy of the State and its minions.

While the State has remained busy fiddling with restraining the articulate neighbours from encroaching on his land by way of performing some rituals prescribed under the Constitution and other laws, there is no realisation about the grotesque distortions of the situation by the mere fact of its own presence. The simple questions which arise in this context are :

> Can a situation in which the tribal people are totally at the mercy of the State even for recognition of the fact, not to speak of their right, that they are in possession of the land, which they may have been tilling for generations unending according to their customs and traditions, be considered to be in consonance with the spirit of the Fifth Schedule?
>
> Can the State under the aura of *Eminent Domain* have the unfettered right to dispose of the land and other resources, which have been under the command of the local community through the ages, be said to be even in accordance with the provisions of the Fifth Schedule, let alone the grand scheme of an egalitarian social order which the nation has set for itself to achieve under the Constitution outlined above?

That, the answer to both these questions is a clear and categorical 'no' under the scheme of the Fifth Schedule read with other provisions of the Constitution is incontrovertible. Any doubts in this regard have been set at rest after the implicit premises of the provisions of the Fifth Schedule have been made explicit through the Extension Law. Moreover, it has been clearly stated that all other laws to the extent they are not in consonance with the basic propositions of the Extension Law, become null and void with effect from 24.12.1997.

Let us now review the latest situation with reference to the most vexed issue of land. Land for the tribal people is not just 'an item of their property' as is the case for many other people. 'Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source for economic empowerment. Therefore, the tribes too have great emotional attachment to their lands. The land on which they live and till, assures them equality of status and dignity of person and means to economic empowerment in social democracy.[121]

It is in this frame that the regulation-making power of the State to deal with alienation of land in the Scheduled Areas is so extensive. A natural question in this context, therefore, arises is whether the same State can be allowed to dispose of the land and other resources in these areas over which it claims to have full command, in any way it likes. The answer again has to be a clear No. This view has been supported by the Hon'ble Supreme Court thus :

> "This negative answer leads to effectuate the Constitutional objective to preserve the land in the Scheduled Area to the tribals, prohibits the Government from allotting their land to the non-tribals, prohibits infiltration of the non-tribals into the Scheduled Area and prevents exploitation of the tribals by non-tribals in any form. This purposive interpretation would ensure distributive justice among the tribals in this behalf and elongate the constitutional commitment. *Any other interpretation would sow the seed beds to disintegrate the tribal autonomy, their tribal culture and frustrate empowerment of them, socially, economically and politically, to live a life of equality, dignity of person and equality of status.*"[122]

In this context the executive power of the State in the Scheduled Areas to dispose of its property under Article 298 cannot be absolute as for the general areas. It 'is subject to the provisions in the Fifth Schedule as an integral part of the Constitution. The legislative power of the State under Article 245 is also subject to the Fifth Schedule, to regulate the allotment of government land in the Scheduled Area.'[123]

The Hon'ble Supreme Court has further clarified[124] the position by stating that

> *'The Constitution intends that the land always should remain with the tribals. Even the government land should increasingly get allotted to them individually and collectively through registered coop-*

erative societies or agricultural/farming cooperative societies composed solely of the tribals and would be managed by them alone with the facilities and opportunities provided to them by the Union of India through their annual budgetary allocation spent through the appropriate State government as its instrumentalities of local body in a planned development so as to make them fit for self - governance....

The words "peace and good government" used in the Fifth Schedule require widest possible interpretation, recognised and applied by this Court".

In the specific case of Andhra Pradesh the Hon'ble Court observed[125] :

"The State Government also stands prohibited to transfer by way of lease or any other form known to law, the Government land in Scheduled area to a non-tribal person, be it natural or juristic person except to its instrumentality or a Co-operative Society composed solely of tribes as is specified in the second part of Section 3 (1)(a). Any other interpretation would easily defeat the purpose *(sic)* exclusive power entrusted by the Fifth Schedule to the Governor. *If the Cabinet form of government would transfer the land of the Government to non-tribals peace would get disturbed, good governance in Scheduled Area would slip into the hands of the non-tribals who would drive out the tribals from Scheduled Area and create monopoly to the well developed and sophisticated non-tribals; and slowly and imperceptible, but surely, the land in the Scheduled Area would pass into the hands of the non-tribals. The letter of law would be an empty content and by play of words deflect the course of justice to the tribals and denude them of the socioeconomic empowerment and dignity of their person." (Emphasis Author).*

While concluding their observations, the Hon'ble Court made[126] the intent and content of the Fifth Schedule crystal clear :

"The object of Fifth and Sixth Schedules to the Constitution, as seen earlier, is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals *inter se* but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled Areas, for their economic empowerment, social status and dignity of their person."

The State has, thus, been formally estopped from acting arbitrarily in matters concerning the management and assignment of natural resources in the Scheduled Areas. In the mean time the tribal autonomy of management of their resources, an integral part of the scheme of the Fifth Schedule, has been made explicit in the Extension Act with the *competence* of the community in the from of *Gram Sabha* being enshrined in the Constitution itself. In fact, the very concept of 'government land' becomes incongruous in this frame which hits at the root of all these provisions according to which the State is currently assigning land including the mineral resources to various interest groups. Its role stands totally transformed now as we will discuss later.

Chapter 8
Community in Command

Resolute Tribals; Wavering State

The tragic episode, spanning the whole half-century after independence, is coming to a close slowly but steadily in the Scheduled Areas. The tribal people in these tracts hitherto were being pushed unto the margin of the new economy simply because the natural resources, which they had commanded through the ages, acquired centrality in the wake of industrialisation being accepted as the top item on the agenda of national development. The tribal people have challenged this process of marginalisation. The community at the village level is asserting its natural right over the resources in its habitat which comprises the base of its subsistence economy. Such assertion is irrefutable, law or no law. But in this case, the assertion comprises the kernel of the special provisions in the Fifth Schedule. Moreover, it is also in consonance with the basic premises of our Constitution reinforced by International Conventions. It is the other party, the State, which has been guilty of unconcern about the well being of the tribal people and even of blatant disregard of the Constitutional mandate in that regard.

The confusion on this vital point can be traced to the inadequate appreciation of the basic situation in the tribal areas and elsewhere in the country. The Fifth Schedule seeks to protect and reinforce the egalitarian elements, which are still in profusion in the social and economic systems of the tribal people notwithstanding the serious erosion there in after independence. So far as the rest of the country is concerned the situation is the other way round. The Constitution seeks to discount the iniquitous elements and provide an even ground for the onward march of the people for achieving the cherished goal of establishing an egalitarian social order. This task by any standard is herculean. The remnants of the feudal - like as well as the imperial systems have to be removed from our social and economic life. At the same time, we have also to keep constant vigil and ward off the insidious attack of the neo-imperialist capitalist forces under the tantalising cover of the so-called development.

This task has been rendered still more difficult in recent years. It may be recalled that the basic tenets of the Constitution concerning equity and egalitarian order were disregarded in the beginning in the name of meeting the crisis or for easy and quick gains on economic front with the avowed objective of creating necessary base for making equity-exercises really meaningful. This regression on the equity front during that phase in course of time has come to be accepted as normal and natural. The loaded deals have become *'the Rule'*, in the style of fabled game of *chausar* between the *Kauravas* and the *Pandavas* with *Shakuni* dice, on the national stage with-

out any one questioning its veracity. It has inevitably led to pauperisation of the ordinary people like the *Pandavas*.

The situation on the equity front, therefore, has become much worse, descending to abysmal levels, compared to where we began as a nation at the time of adoption of the Constitution. Had we proceeded in the right direction the course of events would have been totally different in the Scheduled Areas and also in the rest of the country. In the Scheduled Areas, the equitous frame of the tribal people would have remained as it was with some changes no doubt, which would have been within the limits of tolerance. In the general areas, inequality would have relented as the gains of development reached the disadvantaged sections. Thus, the differential in the basic frames of the tribal economy and the national economy would have gradually faded out. It would have dispensed with the need of any special provisions for the tribal people like that of the Fifth Schedule and even the Directive Principles.

On the contrary the neglect on the equity front has resulted in regression every where. The Scheduled Areas are the worst sufferers. The ills of our national life have infected these areas during the long years of neglect, confusion, ambivalence and even patently iniquitous moves of the intruders and even the State as discussed in detail earlier. This tide is now turning with the solemn resolves and assertions by the people themselves after it has remained unchecked for decades on end. *No one during this fateful interregnum bothered about the tribal people's disapproval which remained unrecognised, as also their resistance which has been misconstrued.* Even intermittent revolts got branded as violations of law as also their addiction to archaic traditions. They were dealt with as such without any qualms of conscience. The anti-people measures have continued without any appreciation of the people's side. The actions from the people's end of all descriptions really comprised the simple and natural forms of assertion by the simple people for whom *their* tradition is the law and the so-called laws of the land its blatant violation.

Towards an Apposite Finale

The provisions of the Fifth Schedule made explicit through the Extension Law now specifically envisage 'the traditions and the customs' in the Scheduled Areas as *the reference frame* with suitable adaptations no doubt which may be necessary in keeping with the Constitutional values and the *spirit* of other laws which may be in force for the time being. It further notes the presence of the community, the only organic element in the jumble of formal institutions, and its *competence* to manage the day to day affairs of the members thereof, as it should be in a real democracy. The resources in the habitat, the bone of contention not only between the tribal people and the intruders but also between the tribal people and the State, are now unequivocally under the command of the community. The implicit schema of the Fifth Schedule has been made explicit in the Extension Act. Moreover, the State has also been estopped from the indiscretions which it has been

indulging in on the mistaken premise of *Eminent Domain.* In fact, this premise in its blatant form is discordant with the basic structure of our Constitution. Moreover, in the case of the Scheduled Areas it is a blatant violation of the mandate concerning 'peace and good governance' of the Fifth Schedule. The estoppal by the Hon'ble Supreme Court puts the record straight. It would help in recreating the right conditions as envisaged by the Founding Fathers for enabling the tribal people to build on their egalitarian tradition. While the tribal people catch up with the modern world on other counts concerning a variety of new advances in many fields selectively, the rest of the country currently obsessed with rat-race on the economic front, can make suitable amends in respect of the Constitutional values of equality, equity and fraternity in which it could learn a lot from the people in the wild.

The situation on the ground, however, is not that simple. Let us take the two extreme cases, that is, Bastar in M.P. and the North East. There is no doubt that much water has flown even under the bridge of *Indravati* in Bastar. Yet Bastar has successfully repulsed many an exotic attack on its rich virgin resources. The North-East on the other hand, even in the midst of political turmoil, has been spared the trauma of mindless development. It is largely because the *exclusion principle* has remained in vogue *de facto* notwithstanding the *de jure* changes in many of its territories. In other Scheduled Areas, the confrontation between the community and the State with the acknowledgement of the community's full command over the resource base in the eyes of law, should ease. Yet a set of new dilemmas are on the cards which have to be satisfactorily resolved.

The community is *competent*, nay *fully competent* to manage the resource base in its habitat, as laid down in Section 4(d) of the Extension Act. It is capable of meeting any challenge provided it can understand its nature and can identify the motive forces behind the same. Here is the real twist. The State has miserably failed in its duty to enlighten the community on these counts and to simulate conditions so as to enable the community to learn from experience. Only when the community acts and learns from experience that it can be ensured that it is really competent to meet challenges on its ground and chart out a new path for its advancement. *The fact is that the State, instead of standing by the side of the people, decided to join the bandwagon of plunderers and avalanche of adverse forces whose nature the simple people cannot understand.* The physical presence of 'the Guardian and the Benefactor' State on the other side has misled the people. They have come to believe that what was unfolding was natural and inevitable. The revolts came only when the limits of resilience and tolerance were transgressed and shattered.

The situation in the Scheduled Areas, therefore, is extremely complex. There are extensive regions like those in Bastar or Mandla in Madhya Pradesh or Gumla in Jharkhand which are largely free from exotic intrusion. But on the other extreme are the neighbouring tracts of Ranchi in Jharkhand and Koraput

in Orissa where the tribal people have virtually lost every thing with not even a cubit of land to stand on, which they can call their own. Similarly, the community is also not the same everywhere. It is strong and effective, for example, in Santhal Parganas, Singhbhum and Khunti in Jharkhand. But the scene changes as one moves on to Ranchi or even Gumla in Jharkhand and Khargone in Madhya Pradesh. Its hold on the affairs of the village has considerably weakened.

A sea-change is, thus, on the cards in the Scheduled Areas in general with the people realising the nature of their natural rights. Moreover, the traditions and the customs of the people are coming into vogue, superseding many of the incongruous laws in force. But this change will enable the community to assert their rights effectively largely only in those areas where inroads have not been made by the exotic forces. This may also be the case in some other areas until such time that the frame of resource management and utilisation remains traditional with no instrusions. But one cannot afford to turn a blind eye to the paradigm transformation at the national level which has brought the resource-rich areas at the centre of the stage of the new economy. This transformation has already changed the social and economic scenario in many parts of the Scheduled Areas. In some cases it may be even beyond redemption. Nevertheless, the State which so far has not played a fair game, to say the least, is now bound by a clear and categorical Constitutional mandate. It must mend its ways. This it cannot afford to neglect even otherwise for long in the wake of the mounting assertion from the people themselves as the realisation about the community's *competence* to act on its own spreads. It is the most natural right in a true democracy, which has been made explicit now after the bewildering haze of imperial hangover for fifty long years.

Inapposite Concessions

It is possible that some ambivalence may still persist. For example, while dwelling on the situation created by the paradigm transformation, the Hon'ble Supreme Court did concede the point that 'the tribals shall remain in possession and enjoyment of the lands', yet tended to plead for some compromise in national interest when it observed[127] : 'Equally exploitation of mineral resources constituting the national wealth undoubtedly is for the development of the nation. The competing rights of the tribals and the State are required to be adjusted without defeating the rights of either'. In its endeavour to harmonise the blatant violation of the Constitutional schema by the State while leasing out the land to non-tribals as corporate bodies or otherwise, which is the ground reality and has to be faced squarely, the Hon'ble Court has observed[128] thus :

> 'Since the Executive is enjoined to protect social, economic and educational interest of the tribals and when the State leases out the lands in the Scheduled Areas to the non-tribals for exploitation of mineral resources, it transmits the correlative above constitutional duties and

obligation to those who undertake to exploit the natural resources should also improve social, economic and educational empowerment of the tribals.'

The command over resources, which is the very essence of the dignity and honour of a people, so lucidly brought out by the same Court in its directions concerning the right to life, thus, get transformed on pragmatic considerations into the slimy money equations of the capitalistic world. The concerned industry has been directed to incur expenditure on a number of items enumerated by the Hon'ble Court with a further injunction for setting apart at least twenty percent of the net profit for welfare and developmental activities. This is undoubtedly a welcome break from the unbridled operations by all sorts of people including the State flocking in the Scheduled Areas. *Yet the fact remains that the command of the community over its habitat including the use of resources therein, is a non-negotiable proposition.* Any injunction or statutory mandate for any kind of financial provisions has to be subject to the condition that the community's command remains intact. This is basic to the scheme of the Fifth Schedule as also the Constitution.

Directive Principles : The Sturdy Pillars

In the treacherous landscape of iniquitous social order in the country, the Directive Principles of the Constitution comprise the only sturdy pillars on which the grand superstructure of the Socialist Democratic Republic can be built. The command over the material resources of the community and the way it is used hold the key for attaining this cherished goal[129] :

"One of the principal aims of socialism is the distribution of the material resources of the community in such a way as to subserve the common good. This principle is embodies under Article 39(b) of the Constitution as one of the essential Directive Principles of State Policy. Therein, this Court laid stress on the word 'distribute' as used in Article 39(b) being a keyword of the provision emphasising that

> "8... The key word is distribution and the genius of the Article, if we may say so, cannot but be given full play as it fulfils the basic purpose of restructuring the economic order. *Each word in this Article has a strategic role and the whole Article is a social mission.* It embraces the entire material resources of the community. Its task is to distribute such resources, its goal is to undertake distribution as best to subserve the common good. It reorganises by such distribution the ownership and control."

What is, thus, mandated for general areas as a course of action, to ensure progression from the prevailing iniquitous social and economic order to the egalitarian order, has to be so construed in the case of Scheduled Areas as a mandate to ensure that there is no running down of the prevailing egalitarian elements therein on any count. The first condition for ensuring this is that the command of the community and communitarian concerns must not be compromised at any cost. This calls into question some of the

basic premises of the current paradigm of development such as individualism, competition, profit as the motive force for advancement. The traditions and the customs of the tribal people are in favour of maintaining the egalitarian structure which is central to the solidarity of the community. Once the community weakens, there is nothing in the System which can contain the adverse forces, which are now global in their expanse, with no norms to check the ruthless logic of neo-imperialist capitalist design.

While individual initiative and enterprise do have a vital role to play in the advancement of the community, it has to operate within a value frame which does not weaken the community. *The bonds of the community and the initiative of its individual members are not incompatible.* The riddle of individual *versus* the system is a fiction consciously created by the managers of the capitalist order. Its sole objective is to shatter the community which alone is capable of providing an effective check against the ruthless onslaught of capitalist forces. At the moment these forces are all set to isolate the man and convert him into a cog of the production machine, the very purpose of whose 'life', the *raison d'etre* of the very existence of each 'cog' must be accepted as subserving the cause of the Grand Machine.

The Lingering Dissonance

In this frame, as the traditional resource use in an area, which has provided sustenance to the entire community, undergoes change, it has to be carefully planned within a set of parameters which have to be accepted as inviolable. For example, the mere mechanical provision in the Mines and Minerals (Regulation and Development) Act of Andhra Pradesh to the effect that a mining lease in the Scheduled Areas shall not be granted to any person who is not a member of the Scheduled Tribes is totally inadequate and cannot by itself be accepted as being in consonance with the spirit of the Fifth Schedule. It is the community, not individual members, severally or even as comprising groups like a cooperative, which has the natural command over the resources. The resources in the habitat provide sustenance to all members of the community. The right of individual members is stringently limited to the use of the natural resources for making a living. It is the exclusive prerogative of the community to realign the resource-use with the changing situation.

The shifting cultivation is the best example of the functioning system under community's command. The basic tenets of that system have been retained even in settled agriculture, with suitable adaptations no doubt. Such adaptations are within the competence and capability of the community. Now that the resources are to be used for non-agricultural purposes, there is a qualitative change. A suitable transformation has to be effected which, *inter alia,* must satisfy the two basic conditions, namely, (i) the community must remain in command in the new setting, and (ii) the differential amongst the members of the community must

remain within limits of tolerance so that the community spirit is not only not weakened but is reasonably reinforced. The community spirit will be the only ally of the people as they move into the hitherto unknown territory of modern economy.

While the alternative use of the natural resources by individual members of the community or cooperatives thereof, as envisaged under the A.P. Law, may not transgress the above parameters provided they are relatively smaller ventures and there is full realisation of the fact that the traditional agricultural economy has been rendered non-viable in the national economic frame. The differential in the levels of entitlements between those engaged in the traditional unorganised sector including agriculture, artisans and such like, and those in the modern organised sector including mining and industry, has increased phenomenally. It has moved from about 1:1.3 in the early fifties to 1:12 currently as the century is coming to a close.[130] Therefore, even in small ventures of mining like those concerning minor mineral, as a rule all labourers engaged in the ventures should be involved as partners with equal stake. The entrepreneurs, if any, cannot have any status other than *'Number One amongst Equals'*.

This is the way in which the tribal people, while on their own, ordinarily organise their work when they move out of their villages in search of employment. The sugar cane harvesters from Khandesh working in the extensive sugar cane fields of Gujrat provide[131] the best example of egalitarian cooperatives with no formal structure to bind except their well-established tradition of working as a community. *It is unfortunate that the managers of the modern system have a vested interest in creating structures and hierarchies in total disregard of the communitarian tradition.* Consequently, they force designated leaders from above for the sake of their convenience and also with the nefarious design to weaken the community spirit and to render the individual worker defenceless.

When it comes to larger scale operations in the mining sector, enterprises owned by individuals or even small groups, be they members of Scheduled Tribes or otherwise, are bound to violate both the conditions concerning the community's command as also the community spirit. Moreover, it goes against the grain of Article 39(b) and (c) which comprises the *inviolable parameters for resource use* in the larger national frame. The major role of public sector enterprises in major industries including mining activity was expected to assume the leadership in the vital structural transformation of the national economy and subserve the egalitarian objective at the national level. It has miserably failed in this mission at the national level. Its record in the Scheduled Areas is dismal where it would have been possible to make a real breakthrough in the general setting of an egalitarian milieu. One is left wondering whether they were even conscious of such a mission. In this situation instead of accepting that challenge, the Captains opted for the easier and devious path. The pauperisation of tribal people was ac-

cepted as inevitable in the interest of so-called development of the region, the state or even the nation. Less said the better so far as the functioning of private sector enterprises is concerned.

Let the System Adept...

Now that the issue concerning the command of the community over resources has been clinched and the scheme of the Fifth Schedule has been made explicit in terms of the community's *competence* to manage the same having been enshrined in the Constitution through the Extension Act, any private enterprise based on the resources in the Scheduled Areas is ruled out. It is violative of the Fifth Schedule which is an integral part of the Constitution. It has been further reinforced by specific provisions of the Constitution such as Fundamental Rights and Directive Principles as also by the International Conventions relating thereto. Moreover, this issue can no longer be ignored. The Hon'ble Supreme Court has directed the Governments in the concerned States as also the Union Government to take stock of the situation in the light of the Constitutional provisions and the State's responsibility for protection and advancement of the tribal people. They are also expected to come up with a suitable policy backed by an appropriate legislation. *It is a matter of regret that no action seems to have been initiated at any level even after more than two years of the said direction.* They may continue to drag their feet indefinitely.

The position so far as the people are concerned had been made clear long back in the struggles against the inroads of the neo-imperialist capitalist forces in the Scheduled Areas. Their stand has been vindicated by the subsequent events as discussed above. In the agency areas of Andhra Pradesh, after the *Samatha* case people have started questioning what so far has been taken by all concerned as normal. For example, the right of the Forest Development Corporation itself to lease out collection of cashew in plantations raised by the same to contractors has been challenged. The Coprporation contested[132] that 'agreement for collection of cashew usufructs cannot be considered as lease agreement and cannot be called a 'transfer of immovable properly as contemplated in the regulation'.

The petitioners in this case had come to the Court on behalf of the tribals of concerned villages who 'as a last resort.... called Gram Sabha..... where in it was resolved that case under LTR Act should be booked against APEDC'. The Hon'ble Court of the Special Deputy Collector (TW), Pancha did not accept contention and, drawing extensively on *Samatha* case, held that 'the definition of transfer is thus a very comprehensive definition and the contention of the respondent... falls flat when viewed in terms of an agreement.. allowing the bidder (non-tribal) to collect cashew usufructs. The Courts therefore directed [127] the Corporation to assign the same to tribal cooperatives in accordance with the directions of the Supreme Court in Samatha case. The significance of this case is that the State had to relent and mend its way in the face of people's assertion through a resolution of Gram Sabha.

... As the People March Ahead

It would be opposite to note at this stage that the people of Mavalibhata tract in Bastar had given a big lead in this vital issue of command over resources way back in early nineties. They defied the State which gave licence to a private company to set up a steel plant in 1992. They threw away the foundation stone of that plant which was laid by the Chief Minister of the State to the acclaim of the galaxy of *bhadralok* of the modern world including political parties of all shades from left to right, with contempt which it so richly deserved. The foundation had been laid without even showing the courtesy of taking the people in confidence. This assertion was made even while there was ambivalence on many vital issues amongst the 'guardians' of the tribal people. Since then, the position concerning the scheme of the Scheduled Areas in terms of peace and good government has become quite clear and made explicit as discussed earlier. The community's command is supreme with no possibility of insidious intrusions even by the State in the face of estoppal by the highest Court.

The only possible scheme of the use of natural resources mandated on behalf of the people whose competence has also been formally enshrined in the Constitution now has been spelt out in Mavalibhata Declaration[133] as follows :

> *"Only those enterprises will be allowed to be established in our respective areas which agree to accept community control over them. Under this arrangement, there will be a provision for majority shares in the name of local community. This provision will not be against money but will be in lieu of the real contribution of the community by way of cooperation and consent for use of those resource by the enterprise, over which it has enjoyed full control through the ages and which have provided the community and its members with sustenance in all aspects of their life. Other partners in the enterprise will be those who may invest capital and all categories of workers.*
>
> *This form of share-holding by the community will not compromise in any way the claims of the displaced and the affected individuals for compensation and honourable resettlement.*
>
> *In the context of this claim on behalf of the people, we will prevent further privatisation of public sector enterprises. In case it becomes necessary to change the structure of an enterprise, the government should accept this claim of the community and hand it over to them as its rightful owner."*

The future course of development of the Scheduled Areas in the frame of paradigm transformation will, thus, be guided by the community which will reinforce the egalitarian social and economic base in these areas and will provide the necessary lead to the rest of the national economy caught in the web of neo-imperialist capitalist forces under the slimy glittering covers of liberalisation and globalisation.

Chapter 9

The Last Reckoning

With the community in command at the primary village-level, in keeping with the spirit of the Fifth Schedule and the ideal set out in the Constitution for the national polity, the other antagonistic forces and competing elements including the State should relent and move on to the margin of the stage, if not fade out altogether. But, the question is 'will they?' The tide has turned no doubt, but it is just the beginning with the dawn of realisation of the real potential of the Fifth Schedule and the true spirit of democratic polity. The antagonistic forces and the powerful ruling elite have not even realised the nature of change and are oblivious of the happenings, as hither to, in the remote hills and forests amongst peoples having strange customs and uncanny traditions. The State and others so far have been merely responding to the events out there, that too to the minimal extent as may be necessary to avoid the trouble for the moment and pacify the people and defuse the situation. In fact, the people on the other side are themselves perplexed. They are not sure about their own position in the midst of a bevy of messages and proclamations, administrative and political. Their assertions are sporadic, still largely issue-related and not extensive. And what is worse, the vested interests in the mean time have made deep inroads in these areas. The educated people amongst the tribal people themselves have got co-opted to a large extent by the exotic system. Last, but not the least, the fabric of the community, which has stood the test of time through the ages, has got weakened in the half-century after independence. Nevertheless the situation is not yet beyond redemption. As the realisation grows about the new change, effective assertion is bound to follow.

Executive Falters, Court Directs

It will, however, be necessary to take stock of both the positive and the negative features of the current status of the Scheduled Areas. Let us begin with the state of regulation making which is basic for peace and good government. A systematic exercise in this regard has not even begun. What we have reviewed so far are mere responses, sporadic and minimal, of the System to various problems. Even in Andhra Pradesh, which leads on this front, the situation is not satisfactory. In a recent judgement while reviewing the state of regulation-making and their implementation in relation to land issue, which is most vital, the Hon'ble High Court observed[134] that the concerned 'regulations meant for the welfare of the tribals remained on the Statute-book unimplemented. It is also seen from the record that as and

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when there is an unrest in the tribal areas... the Government was coming up with some regulations to pacify the situation'. What follows is still worse. The officials proceed in a cavalier fashion. They 'will pass some orders without looking into the record and without giving any opportunity to the non-tribals to put forth their cases. These orders naturally resulted in a plethora of appeals. The result is that the symbolic acts done by the officials for implementing the regulations did not yield any results and in fact *these regulations in the statute book are stairingly looking at the civilised society without implementation'*.

The Hon'ble Court, instead of waiting for the State and others to respond and act, decided to give directions to the Government of Andhra Pradesh about the way they should proceed to resolve the tangled issue of restoration of alienated lands of the tribal people and assignment of Government lands in the Scheduled Areas. The principles, as also the procedure set out by the Hon'ble Court[135] seek (i) to cut through the complex web of laws, rules and executive instructions in which the entire issue has got entangled, (ii) to bring the issue into the open, and (iii) to arrive at a final decision following principles of natural justice in a wider forum. The approach in this case has to be 'resolution of the dispute on the basis of consensus' in place of the conventional adversorial processes in revenue courts. Some of the important features of these directions are as follows :-

(i) The implementation of land transfer regulations and assignment of Government lands has been entrusted to Committees at the village and the district level. The latter comprise the District Collector and representatives of N.G.Os. and political parties.

(ii) The decks have been cleared for objective decisions and effective action under the regulation by a clear direction even to ignore all Orders 'issued by the State Government in exercise of its executive powers contrary to the land transfer regulation.'

(iii) The survey records of 1919 and 1934 shall form the basis for the verification of the claims of the concerned parties.

(iv) The non-tribals in possession of the lands belonging to the tribals after 1917, the year of the first Regulation, shall have the onus to substantiate their claim to hold the property.

Note : Under Regulation 1 of 1970, a presumption has been created that all the lands in Scheduled Areas belong to the tribals unless proved otherwise.

The Hon'ble Court has also taken note of the indiscriminate issue of *pattas* by the erstwhile land owners just before the abolition of estates. This has created havoc in large tribal tracts specially in the erstwhile princely States with no correctives in that regard by the Government in any State in the long half century after independence. For example, the *thekedars* of Bastar State had no legal claim to the lands from which they just collected

revenue for the Maharaja. Yet, they got themselves recorded as *zamindars* after the merger of Bastar in the Indian Union. The claims of the tribal cultivators, who should have been deemed to be the real tenure holders, just evaporated in the thin air. The estate owners almost everywhere continued to assign *pattas* in collusion with the local officials even after the abolition of estates for many years The Hon'ble Court in the case of estate villages of Andhra Scheduled Areas, therefore, has directed[136] the Settlement Officer 'to reopen all *pattas* that were given till now' and after giving due opportunity to all the *patta* holders to 'pass orders with reason whether they are entitled to *pattas* or not under the provisions of the Regulations.'

What the Hon'ble High Court of Andhra Pradesh has sought to do through the above direction falls squarely within the specific duty of the Executive under the Fifth Schedule of the Constitution. The Executive has not only failed to recognise these problems in due discharge of its responsibility, but it has acted contrary to the intent and content of the regulations framed for enabling it to discharge that obligation. It is unfortunate that the Executive, at best, is satisfied with the performance of certain rituals with no concern about the spirit which has rendered the regulations rather ineffective. The real position on the ground in relation to the land regulation has been summed up[137] by the Hon'ble Court as 'though an impression is given that every thing possible is being done to prevent exploitation of tribals on paper, in action the officers implemented these Regulations more in breach.'

'Why should the Executive behave like this?' is a natural question which has to be considered seriously. In fact, this is not the case with the Executive alone. The entire System in its dealings in matters concerning the basic values like equity and social justice is, at best, non-functional if not aiding and abetting the forces inimical to those objectives. Take the case of people's representatives themselves who are supposed to guard the people's interest and direct the policies of the State for achieving the Constitutional objectives. If the results are any guide for judging the way they have performed their roles, they have miserably failed on this front. There is steep slide back on all counts so far as Constitutional values of equity, equality and fraternity are concerned. In the case of Scheduled Tribes and Scheduled Areas there are special institutions like the Tribes Advisory Council and a Constitutional National Commission which are being maintained at a heavy cost by the nation. How is it then that the Executive has, at best, been fiddling with such basic issues like land with no effective intervention on their part?

The Hon'ble High Court in the case of Andhra Pradesh while referring to the role of the Tribes Advisory Council has observed[138] with a deep sense of concern and anguish as -

'... if the Council is really functioning, it is not known how such pathetic conditions in tribal areas are continuing even after 50 years of independence. Perhaps this question can be best answered by the so-called representatives

of tribals themselves than any others. *A time has come to question their inner hearts what they are doing for the people who sent them to the Legislative Assembly'.*

The same observations are equally valid, if not more, in the case of the so-called representatives of the people in the Parliament and even the highest Constitutional Authority, the President, who, in the ultimate analysis, is a Representative of the People.

Political Capture of a National Institution

When we look at the other institution, the National Commission for Scheduled Castes and Scheduled Tribes, a similar situation can be seen to prevail. There is no relationship between what is formally presented and claimed concerning this august authority on paper and the reality. For example, it was believed that the erstwhile Special Officer for Scheduled Castes and Scheduled Tribes had remained ineffective because of the weakness in the provisions of Article 338. The institution was, therefore, reinforced in 1991 by amending the Constitution. The one-man institution of the Special Officer (commonly known as the Commissioner) was replaced by a seven-member National Commission. It has been invested with specific powers in relation to investigation and prior consultation by the Government on major policy issues concerning the Scheduled Castes and Scheduled Tribes. Yet, during the same period when these institutional changes were being effected on paper, no one even cared to look at what the Commissioner, a weakling according to the powers that be, had to say in his Reports about the condition of the Scheduled Castes and Scheduled Tribes. The fact is that not a single recommendation of the Commissioner was even discussed in the Parliament in the debate on his Report (28th) which has been acclaimed as a document 'next in order of historic significance only to the Constitution of India' and hailed as 'a memorable event in the continuing discourse on the nature and future of Indian democracy'[139]. The debates in Parliament on the Reports of the Commissioner or the Commission have become mere rituals in which the hon'ble members wallow in generalities with no reference to what is presented by these authorities after detailed studies and deliberations. These debates have no impact on policies and programmes which they are expected to seriously deliberate and direct.

That is not all. What has been sought to be gained on paper by establishing a powerful National Commission in place of a mere Commissioner has been more than vitiated by flouting the well-established convention of selecting a public man of repute for this assignment and keeping the same above party considerations. All appointments except for the first chairman of the National Commission and a few members have gone to party nominees. As the last Commissioner to hold the office under Article 338 between 1986-91, when the Constitutional change over was being effected, I had invited attention[140] of the Prime Minister and also the Leaders of main political parties in the Parliament about the possible

disregard of the earlier convention concerning appointment under Article 338 to the new National Commission and the adverse implications of the same. The proposition was simple. An active member of the ruling party as the Chairman or a member of the Constitutional Commission cannot be expected to discharge that responsibility objectively unbiased by political considerations. Moreover, the people must also believe that the institution is truly national above petty party considerations and, not political. It was suggested[141] that 'it will be desirable that the constitution of the National Commission is based on a general consensus and may not be viewed even remotely as a political appointment. The composition of the Commission, therefore, should be decided after taking leaders of the opposition and other political parties represented in Parliament in confidence.' The leaders of the major political parties were also appraised about the suggestion.

There was no response from any quarter whatsoever. The matter was then brought to the notice of the President, the last arbiter on matters concerning the Scheduled Tribes, expressing deep concern about the non-response from the Prime Minister. Such a demeanour was ominous particularly in the context of the findings of the Commissioner in earlier Reports which showed[142] that 'scant regard is being paid to the finer aspects of Constitutional and human rights and the State's responsibility particularly in the case of tribal people.' The President was also clearly told[143] that 'If a right convention is not adopted from the very beginning in the appointment of the National Commission, there may be no occasion in future even for such lapses being pointed out. *It would mean that while the Constitution may continue to be violated, the contradictions in real life situation may continue to become sharper, yet even the correct situation may not be brought to the notice of the President'.* It was concluded that this could make the entire Constitutional Schema concerning the Scheduled Areas non-functional, if not dysfunctional.

As the convention about appointment to the constitutional authorities is a vital issue, the Commissioner was of the view that it was imperative that it was discussed in the Parliament so that national consensus could be engendered on this point on the same lines as in the Constituent Assembly. No action was taken even by the President even though a formal request was made by me invoking the provisions of Article 338 as the Commissioner for treating that communication 'as a special Report under Article 338 of the Constitution and direct it to be placed before the Parliament'. The Government in that case could have had the benefit of a clear direction from the Parliament about the way it should make appointments to the National Commission. There was total silence on all fronts.

It is a sad commentary on the way the Parliament itself is functioning that none of the so-called representatives of the people, irrespective of their avowed professions about the political ideology, considered it worthwhile even to allude to this matter of principle in any forum whatsoever. The

successive Governments thereafter arrogated with impunity unto themselves the authority to make appointments on party lines in gross violation of the principle accepted by the Constituent Assembly and largely followed in the appointments of the Commissioners till about the end. Nor did the President consider this matter fit enough for his intervention, unmindful of vital nature of the issue and the supreme role assigned to him in that regard in the Constitution.

Even the Parliament as a body aided and abetted the process of politicisation of this Constitutional authority. The last Report of the last Commissioner, that is, the Thirtieth Report, which pointedly referred to this convention and specifically recommended its adoption for the successor National Commission, remained unattended for long seven years after its submission. None of the hon'ble Members of Parliament even referred to that vital recommendation in the debate later, even though appointments had been made in the intervening period to three successive Commissions largely on party lines by the Governments of the concerned political parties at the centre. Thus, another Constitutional authority, this time concerning the Scheduled Castes and the Scheduled Tribes, stands captured by the political establishment.

Not only the so-called people's representatives maintained stony silence about the blatant disregard of the graceful convention, the change over has remained unalluded even in other forums which avowedly keep a watch on developments concerning the weak and the vulnerable. One, therefore, wonders whether politicisation of all matters and institutions, irrespective of their nature and importance, has been accepted as a norm with no place for a national perspective or objectivity on any issue. Moreover, the only meaning which politicisation of institutions can have in the current national milieu is to use the concerned institutions for advancing personal, sectional or party interests unconcerned with its implications for the objectives of those institutions. If this is the consensus in the ruling elite including the political establishment, what will be the likely scenario in the Scheduled Areas as the logic of another consensus amongst ruling elite including the political establishment, that is, liberalisation and globalisation, giving free play to the market forces, national and international, starts unfolding in these areas and gathers momentum, is beyond description.

The Battle Lines with a Differences

It may be remembered that the Scheduled Areas are resource-rich areas. The logic of the so-called development with industry as the main thrust in the half-century after independence has played havoc so far as the Scheduled Areas and the Scheduled Tribes are concerned. The calculated risk accepted as a part of the game by the Constitutional Commission for the Scheduled Areas (Dhebar Commission) in early sixties has proved to be naive and sheer adventurism, pure and simple. It proved to be so even when the

traditional institutions of the tribal people were still quite strong and effective. *It is a direct result of that adventurist policy that displacement, disorganisation and destitution have become the order of the day for the tribal people.* It may be remembered that this is so even when during this period the establishment of an egalitarian social order remained an undisputed avowed objective at the national level. There was no open questioning of the basic tenets of the Constitution including the Directive Principles. It was because of this frame that the interventions by the Courts of Justice and the framing of some regulations discussed earlier were possible. Even the Extension Act of 1996 with its radical content, enacted perhaps without full realisation about its real potential, falls in the same category.

A question, therefore, arises at this stage whether the ruling elite which is becoming increasingly subservient to the neo-Imperialist Capitalist forces on the global stage will honour the spirit of the Fifth Schedule as exemplified by the Extension Act and clarified in the Estoppals by the Hon'ble Courts. Going by the experience of the way the ruling elite has behaved during the half-century, even some serious commentators have described the Extension Act as a fraud on the people[144]. That even the Union Government could think of moving the Hon'ble Supreme Court for revision of its verdict in Samtha Case about the way the Government should deal with what so far have been taken as Government property in the Scheduled Areas, which, in turn are nothing but a clear enunciation of the scope and the potential of the Fifth Schedule, is indicative of the mood of the ruling elite. That the States have not gracefully adapted their laws in keeping with the spirit of the Extension Act, which is nothing but exemplification of the basic tenet of democracy in the day to day life of the ordinary people, shows how superficial is our democracy with little concern or commitment to the basic values thereof. If this is so even in the beginning of the new phase of people's assertion as per the spirit of the Fifth Schedule what role the State will play when the people start effectively asserting their authority can be anybody's guess. Moreover, there are ominous precursors about direct confrontation between the global market forces all set to capture the resources and the disinherited people whose very survival depends on whether they have effective command on the resources in their traditional habitat. Will the State stand by the side of the tribal people?

The Extension Law would have remained a nonstarter and the directions of the Hon'ble Court a mere ripple in the 'Great Pacific' of unconcern if the law were set in the conventional imperialist mould of 'trusting the System and distrusting the people.' It would have been *not a fraud,* but *one more fraud* on the people in a long series of other frauds which the people have got used to in the last fifty years. Such has been the case not only with many a ordinary law but even the vital provisions of the Constitution itself concerning the basic tenets of equity, equality, liberty and fraternity. Otherwise how can one explain the onward march of the so-called development degenerating into an *'anti-march'* of the elite and

destitution of the people. But there is now a qualitative difference in the situation. The Extension Law is a law with a difference. It is a freak of a new genus. It not only has become effective with its formal promulgation, that is, notification in a Gazette which no body reads or about which hardly any one is even aware, but it has a message divine for the people. This Law does not delegate or devolve any powers to any authority or institution, which themselves are creatures of the Law and have to be subservient to the same. It acknowledges in simple and clear terms the *competence* of the collectivity of the people in a village to manage all their affairs, again with a most significant and vital difference. *The village under the new law is acknowledged as a natural entity, not a creature of law.* This is as it should be. The community in the village precedes the State. Self-management is intrinsic to the very existence of the community and its identity. It is not solicitous of any exotic reference frame. It is governed by its own traditions and customs. It is this community with the great tradition of self-management, which under the Extension Law now comes to the centre of the stage even in the formal system of the State.

A clear realisation of the competence of the community, which has now been put in the Constitution in simple terms which the people can understand and which has been rendered and commented upon by the Hon'ble Courts in terms which cannot be ignored by the ruling elite, can be said to have signalled the turning of tide against the vested interests including the State itself. Nevertheless it is a mere signal. The struggle for realisation of its potential may be bitter as the vested interests may not easily relent. The most ominous facet of the new struggle is likely to be the nefarious game of co-option by the vested interests, the unscrupulous use of the *Chankyan* policy of *sam, dam, dand* and *bhed* amongst the unsuspecting simple people even by the State, their protector. The tragedy is that the tribal people are prone to take promises at their face value with no experience of handling subterfuges of the modern world.

That the arena of struggle of the people, particularly in respect of the command over resources, is going to be their own habitat, is the strongest point in the new matrix of complex forces. It has the potential of becoming the crucial deciding factor. It will make the people's side invincible with clear and categorical formulations like *Katenge Par Hatenge Nahin* and the provisions of the Constitution itself clearly on their side. The count down has already begun in many areas where the battle lines had been drawn earlier. The people are not only marching ahead but consolidating their position with a clear and unequivocal assertion

Sabse Unchi Gram Sabha,

***Gram Sabha* is the Highest,**

Higher even than the Parliament.

Chapter 10

Beyond the Gram Sabha

From Confrontation to Consonance

As the community moves to the centre of the stage, the perception of the people about the State and its institutions will undergo a qualitative change. The community will feel reassured about its *being* in its own surroundings as the stress and strain of incessant confrontation with the System relent. The very basis of new relationship will, therefore, gradually change; harmony in all sphere of life social, economic, political will be the ruling spirit. In this milieu, all exotic institutions, one by one, will assume supportive roles. The community, in its turn, will tend to perceive and freely accept these institutions as extensions of its own being, *albeit* its formal expression, in an ever-widening universal frame. The need for their support will also gradually wane as the economy of the village in the nascent non-centralised polity becomes self-reliant and self-sufficient. This would mark the rise of the fabled *'little republics'* on the Indian horizon after long centuries of pitch darkness; the *'withering away of the State'* in its present form will be a natural concomitant of this process.

'A romantic flight of imagination', 'an ideal unachievable in the maddening complex setting of the ultra modern world', will exclaim the Skeptic as also the 'Realist'. Yet, some thing very much like this romantic ideal still persists in the remote recesses of many a Scheduled Area and is the experienced reality for the countless people living there. They have remained virtually outside the pale of the avalanche of market and hegemony of the State. They are, however, being drawn into that terrible whirl by the insidious market forces aided and abetted by the powerful State. The irony in that the very same State has the constitutional responsibility to check the adverse forces and counter the same, wherever necessary, in these areas so that that ideal is not disrupted and the people there are enabled to imbibe the benign elements of new advances in different spheres of modern life.

The other extreme in the national scene comprises the general areas where the community had virtually collapsed under the savage attack of the British rule. 'The creation of a sense of corporate existence in the local small units of the Indian leviathan', was acknowledged as a matter of highest priority after independence. Accordingly, urgent steps had to be taken for establishing *panchayats* at the village level as units of self-government. It was around these republic-like village institutions that a process of structural transformation of the centralised polity was visualised by the founding fathers.

It was hoped that as the two processes concerning the community at the village level, one for its protection in the tribal areas and the other for its promotion in the general areas, at the two poles in the national life gather momentum, the difference between the Scheduled and the general areas would fade out dispensing with the need for special dispensation for the Scheduled Tribes and such others people.

While the message of the Directive Principle in Article 40 and the avowed objective of the new Constitutional provisions in Parts IX and IXA concerning Panchayats and Municipalities remain to be really appreciated in the midst of great turmoil and bewildering confusion prevailing in the country in general, the situation in the Scheduled Areas is changing fast. The tribal people have successfully challenged the exotic institutions before they could virtually destroy the community, as happened in the rest of the country. As we have discussed at length and in detail earlier, the Extension Act is merely a formal acknowledgement of that assertion of the people and belated acceptance of the Constitutional obligation by the State, *albeit* faltering and tardy, to stand by the tribal people and provide an even ground for enabling them to negotiate the transition smoothly.

The scene of intensive action associated with the mutational change at the moment is largely the village. The nature of change associated with that mutation at other levels, that is, the block and the district, and the likely transformation of the institutional structure beyond the Gram Sabha remains uncertain. The Extension Act indicates basically the general direction for proceeding in this regard. It also provides a suggestive frame of laws and institutions with a wide spectrum of possibilities from which the concerned State Legislatures can pick and choose as per their proclivities. This is in sharp contrast to the clear and categorical position take in the same Act about the Gram Sabha pertaining to its identity as also its competence in respect of the management of vital affairs of the people's life.

The frame in Part IX and Part IXA in respect of Panchayats and Municipalities in general is as open-ended as was the case with Article 40 in relation to Village Panchayats. The most vital issue in both these cases, however, is the formal acknowledgement, or otherwise, of the face-to-face community at the village level. So long as the village community remains excluded and is not incorporated in the formal frame unequivocally, as is the case presently, the intra-institutional relationship at various levels beginning with the Gram Panchayat upto the District Panchayat and above will be an internal affair of the formal institution headed by the State. Any arrangement amongst these institutions will do because, after all, all these institutions are handiworks of the State; no one can be taller than its creator.

Such a fluid state cannot continue for long in the Scheduled Areas where the village community is still strong and is a functioning entity. Therefore, the vital issues concerning the place of village community, in

the ever-widening circle of formal institutions, the relationship of Gram Sabha, the formal manifestation of village community with all other institutions, severally and collectively, as also the validity of various laws, old and new, which are cast essentially in a mould for managing slave-like subject people, are bound to be raised, sooner than later. The ruling elite cannot afford the luxury of continuing with the dictum *'Trust the System, not the People'* once the people become fully conscious about the implications of the unequivocal Constitutional mandate on their side, which is what the Extension Act is, irrespective of the so-called laws of the land ostensibly in force for the time being. In fact, the jurisdiction of many an institution, for example, the State Forest Departments in relation to working of forests and the Banks in relation to coercive processes for realisation of dues without consulting the Gram Sabha, is already being questioned on the strength of the bare provisions of the Extension Act even before the concerned States have been able to formalise their stand in that regard. It is, therefore, high time that the nature of the institutional structure above the village-level in the Scheduled Areas and its relationship with the Gram Sabha is properly defined in the light of the Extension Act and other relevant Constitutional provisions.

A General Resume of Existing Provisions

A large number of institutions concerning different aspects of people's life are operating on the ground. While some of them are organs of the State itself in different departments, others are in the cooperative, corporate, private and voluntary sectors. The Constitution specially envisages establishment of Panchayats for the rural areas at three levels- village, intermediate and district. These Panchayats, according to Article 243G may be endowed *'with such powers and authority as may be necessary to enable them to function as institutions of self-government'*. What elements would comprise 'self-government' at each level, however, has not been defined. These Panchayats have been largely assigned some developmental functions and also social services besides conventional municipal functions. Establishment of municipalities is envisaged for urban areas on similar lines under Part IXA of the Constitution.

As stated earlier, the Scheduled Areas were kept outside the purview of both Part IX and Part IXA with a provision for extension of those provisions to the said areas by law, with suitable exceptions and modifications by the Parliament, under Article 243M and Article 243ZC respectively. The provisions of Panchayats at all the three level have been extended to these areas with effect from 24.12.1996 with exceptions and modifications as given in the Extension Act. The provisions concerning Municipalities, however, have not been extended so far. It virtually means that there is legal vacuum in respect of self-governing institutions in the urban Scheduled Areas.[145]

Some of the more important feature concerning Panchayats as envisaged in the Extension Act are as in the following :

(i) *Village-level :* The change at the village level, as discussed at length in the earlier Chapters, is qualitative and mutational in so far as —

(a) The people living as a *'community'* in a habitation or group of habitations, as the case may be, comprise the primary unit and the basic building block of the entire institutional suprastructure.

(b) The *'Village'* is defined as a spatio-social unit comprising the community in the concerned habitation(s).

(c) The *'Gram Sabha'* is the formal manifestation of village-community.

(d) All formal relationships between the community and various institutions of the State are defined as between the *Gram Sabha* and the concerned institution.

(e) The powers and authority of Gram Sabha are envisaged as natural or *swayabhu.* The Extension Act merely records the fact that 'the *Gram Sabha* is *competent* .....' which stands out in sharp contrast with the general provisions in Articles 40 and 243G which envisage *'endowment'* of powers by the State.

(f) The *Gram Sabha* in the new form is at the top in the hierarchy of democratic institutions for the simple reason that it comprises the people themselves, while all others comprise their representatives.

(g) The *'Gram Panchayat'* is an executive body of *Gram Sabha,* that too in respect of certain specified functions. It is answerable exclusively to the *Gram Sabha* and no one else. It may have some working relationship with other institutions as well but under unequivocal control of the *Gram Sabha* and subject to its directions.

(ii) *Intermediate-level :* The Panchayat at the intermediate level under the Extension Act is the same as for the general areas with no special features whatsoever, except the special roles and responsibilities which it may have as a part of the overall schema for the Scheduled Areas as envisaged in the Extension Act discussed below.

(iii) *District-level :* The position is same as for the intermediate level mentioned above. The Extension Act in this case, however, envisages that 'the State Legislature shall *endeavour* to maintain the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas'.

The difference between the institutions beyond the Gram Sabha from the people's end as envisaged for the Scheduled Areas and elsewhere in

the country, thus, are related to two basic elements —

(i) the *competence* of *Gram Sabha* as made explicit in the Extension Act; and

(ii) the pattern of district-level administration as envisaged in the Sixth Schedule.

These two elements in the limited frame of institutions within the District, as they are, however represent two altogether different perspectives. While the *swayambhu* Gram Sabha has emerged as an ideal institution of non-centralised polity, the power structure of the autonomous District Council in the Sixth Schedule is totally centralised. While traditions and custom of the people are the moving spirit of self-governance in the former case, formalisation of all relationships has been accepted as the norm in the latter. It will be necessary to examine these aspects in some detail so that a harmonious frame can be worked for higher level panchayats.

(i) Gram Sabha and the Panchayats

Let us begin with the Gram Sabha. The Gram Sabha as envisaged in the Extension Act for the Scheduled Areas, both in terms of its identity and the plenary powers it enjoys, is the best possible approximation, in the present situation, to the ideal of village-republic. Its manifestation, therefore, cannot but be at total variance with the highly centralised polity of the nation. This polity, in its turn, is the main determinant of the behaviour patterns and also the nature of relationships amongst different institutions as also between the people and institutions at different levels. The present institutional frame of Panchayats is hierarchical. The so-called 'higher' Panchayats control the so-called 'lower'. This continues to be the norm notwithstanding the fact that new provisions in the Constitution envisage endowment of necessary powers on all Panchayats to enable each one of them to function as an institution of self-government. *The de facto hierarchical relationship amongst Panchayats, this is violation of the spirit of the Constitution.*

Having, thus, stated the principle in clear terms, it may be conceded that in practice a mutational change implicit in that principle may not be feasible. The new relationships between the Gram Sabha and other institutions in consonance with the ideal of village-republics, therefore, can be expected to be evolved gradually, step by step, over a period of time. The pace of this change itself will depend on the way the process of paradigm transformation from the centralised polity to a non-centralised polity frame informs other institutions and the extent to which they are able to imbibe that spirit. Some ambivalence, some conflicts and even ubiquitous regression cannot be ruled out for the intervening period even with best intentions on all sides. Nevertheless extra care will have to be taken to rule out the very appearance of regressive elements and to counter them the moment they appear on the scene. Moreover it will be necessary to ensure at every step that (i) the

change is in the right direction, (ii) the change may be slow but is steady, and (iii) there are no specious moves whatsoever at any cost at any level which may go against the great ideal of village-republics.

As we have seen above, the relationship between the Gram Sabha and the last tier of Panchayats, that is, the Gram Panchayat has been put in the right perspective. The perspective in this regard is so clear and the underlying logic so powerful that the model of the Scheduled Areas with Gram Panchayat unequivocally answerable to Gram Sabha has been adopted even for general areas in Madhya Pradesh and Orissa. The Central Government has also declared the current year (1999-2000) as *'the Year of Gram Sabha.'* In a communication[146] to the States following this declaration, it has been made clear that *the relationship between the Gram Sabha and the Panchayat shall be the same as between the Parliament and the Government.* It implies that the panchayat would hold office till it enjoys the confidence of the general assembly of the people. The Committee[147] appointed to suggest measures for empowerment of *Gram Sabha* has strongly recommended this formulation. It is, therefore, possible that a change in the Constitution itself in this regard may follow, sooner than later. But the position in respect of the relationship of these village-level institutions with the higher-level institutions is not that clear. This uncertainty is responsible for some avoidable confusion and even dissonant provisions in some State laws.

The competence of Gram Sabha has no doubt been expressed in the Extension Act in plenary terms. Nevertheless some specific powers have also been mentioned separately in that law. They are of special significance in the early phase of transition from dependency to self-governance. Some of the important aspects covered in these specific provisions concern land acquisition, prevention of land alienation and restoration of illegally transferred lands, management of water bodies, working of minor minerals, ownership over minor forest produce, control over money-lending, regulation of village markets, control over use, storage, etc., of intoxicants and enforcement of prohibition.

While the primacy of Gram Sabha in all these matters is clearly established in the Extension Act, the Panchayats at other levels have also been brought in the scheme and bracketed with the Gram Sabha. This has resulted in some ambivalence both about the roles and also the powers at each level eventhough the thrust of the Extension Act is clear on this point. It envisages that 'the State legislation ... shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or the Gram Sabha.' With the plenary powers of Gram Sabha as the foundation of the new system, *the power and authority of the concerned Panchayat at any level has to be supportive to those of the Gram Sabha; at best they can be complementary, but nothing more.*

While the place of Panchayats at various levels *vis a vis* the Gram Sabha in the Scheduled Areas may appear to be somewhat compromising compared to the aura of centralised authority which they in general enjoy today, yet in reality their position compared to their counterparts in the general areas is highly elevated. In fact, there can be no comparison between the two situations because the difference in their case is qualitative. In the Scheduled Areas, the Panchayats will enjoy the benefit of reflected glory of the Gram Sabha. They will be supporting and complementing the Gram Sabha in matters which hitherto have been the exclusive preserves of government. The so-called development work, with all sorts of conditions, has remained their arena within which all sorts of permutations and combinations have been tried in the half-century after independence. It has been taken by all concerned as the *Laxman Rekha* not to be transgressed; even a thought about its transgression would be blasphemous. This has been the unwavering view of all Committees beginning with Balwant Rai Mehta, Ashok Mehta and of all governments irrespective of their political ideologies.

The list of items given above in relation to the Scheduled Areas shows that the concerns of Panchayats at all levels hence forth will cover the substantive issues of governance. The question now is not transgression of the *Laxman Rekha,* but its sudden disappearance, *albeit* at the village level to begin with. The *Gram Sabha* is now responsible for managing all aspects of people's life in the village. The Panchayats have necessarily to play a supportive role. A new relationship with government departments, therefore, will have to be forged by the Panchayats in vital matters like management of resources including land, water and forest as also resolution of disputes.

This will mark the beginning of a new phase in the national polity in which the possible scope of the roles and responsibilities of institutions of self-government beyond the Gram Sabha and the necessary powers and authority to enable them to discharge them satisfactorily will gradually unfold. *The sheet-anchor provided by the Gram Sabha, a body taller than any institution of representative democracy, including even the Parliament will ensure that the new structure assumes the form of concentric circles and not that of a pyramid as has been the case so far.*

(ii) Sixth Schedule as a Model

The Sixth Schedule gives a comprehensive outline of administration for the tribal areas of the erstwhile State of Assam which included the territories of present States of Arunachal, Nagaland, Meghalaya and Mizoram as well. The basic unit of administration in this case is a substantial geographical tract known as a *'district'*. The district itself is related to the territory inhabited by a tribe. Each such district is supposed to have been governed by one or more traditional tribal councils. In case, there are more

than one tribes in a district, the territory inhabited by each tribe, should they so desire, can be designated as a region within the district. The administration of the district or the region vests with a Council for the district or the region, as the case may be. *The basic unit of administration in the Sixth Schedule, thus, is the district or the region inhabited by a tribe. This stands out in sharp contrast to the provision in the Fifth Schedule read with the Extension Act. In their case the basic unit is the community inhabiting a habitation or a group of habitations which has been designated as a 'village'*

Thus, there is a qualitative difference between the structure of the two models. Within the universe of a district or a region, as the case may be, the structure in the Sixth Schedule is totally centralised with absolute powers vested in the District Council. In the case of the Fifth Schedule, on the other hand, the structure is totally non-centralised with the village republic as the ideal. The District Panchayats in the Scheduled Areas, therefore, cannot adopt the District Council of the Sixth Schedule as a model in all respects. It can, however, emulate those elements therein which are in harmony with, and in no case are at variance with the ideal of a republic at the village level. The emulation, therefore, will have to be selective.

We have already discussed some aspects of this situation earlier, but the focus there was on the village and the community. Now the focus will have to move on to the provisions which have a bearing on the administration at the district level. We will, therefore, present some of the important aspects of this situation in some detail.

The Sixth Schedule : Some Distinguishing Features

The Sixth Schedule deals with the 'administration' of the 'tribal areas' in certain North-Eastern States. The term 'administration' in this case has been used to cover all activities of a modern State in whose image the traditional system of governance of the tribal people, which was formally excluded from its purview earlier, was to be transformed. It, therefore, covers the legislative, the judicial as also the executive functions of the State and not merely 'administration' as commonly visualised elsewhere.

The two Schedules - the Fifth and the Sixth - basically comprise provisions for transformation of the traditional tribal systems of self-governance, protected under the 'non-regulation' principle of the British days, into systems which are similar to those in other areas with some special features no doubt, if necessary. The objective is that these areas should be formally incorporated in the Indian Republic as established with the adoption of the Constitution. In the case of the Scheduled Areas governed by the Fifth Schedule, this transformation was mutational. All the laws of the land got extended to these areas on January 26, 1950. The impact of this mutation, however, could be mellowed or even the mutation itself

could be reversed under the provision of the very same Schedule by the Governor for specified areas in relation to specific elements, to the extent necessary in his discretion. As we have seen earlier this enabling provision has remained a dead letter even to this day.

In the case of the tribal areas in Assam, however, the process of transformation was not as sudden as for the Scheduled Areas. It could take some time as per the procedure clearly spelt out in the Sixth Schedule itself. This Schedule begins with a statement about the tribal tracts which will be deemed to be 'tribal areas' for this special dispensation. Moreover, each of those tracts, which were serially arranged in a table appended to paragraph 20, was also declared to constitute an *autonomous district.* Since the focus in the Sixth Schedule is on each tribal community living in a territory, the autonomous districts were generally related to concerned tribes such as the Khasi, the Lusai and the Garo. Nevertheless, if there are different Scheduled Tribes in an autonomous district, sub-paragraph (2) of the same paragraph authorises the Governor to 'divide the area or areas inhabited by them into autonomous regions'. For each of these autonomous districts or autonomous regions a Council is constituted under paragraph 2 with powers and functions as specified in other paragraphs. The traditional tribal councils, which hither to have been exercising those powers and performing those functions, are, thus, *disenfranchised* to that extent. What we, therefore, have here is the initiation of a process of the withering away of the traditional tribal councils and their final disappearance from the scene in due course. An exclusive domain has been carved out for the new formal Councils within the domain of the State which covers almost all matter of the State - legislation, administration of justice, taxation, development, social services and finance. The District/Regional Council for its own district/ region functions as 'the government of the district or the region.'

In fact, the District Council is more than a mere government for the district compared to the 'government' at the state level. The Council is also the legislature and even the judicial authority for the district. We will briefly review the powers of the District Council concerning different facets of 'administration' therein.

(i) Legislative Powers

The District/Regional Councils have power to make laws in respect of the ten items given in paragraph 3. Besides social customs, marriage and divorce, inheritance of property and succession of Chiefs, which are all internal matters of the concerned community, they also cover management of land, forest and water as also regulation of shifting cultivation which comprise substantive issues of formal State administration. All matters concerning village and town administration are within their legislative authority. The Council can also make regulations, having force of law, under paragraph 10, for control of money-lending and trading by non-tribals. The

scope of legislative powers of Mikir Hills and Kakbi Anglong Autonomous Council has been considerably enhanced recently under paragraph 3A.

So far as the Acts of the Parliament and of the Legislature of the State of Assam are concerned, their application to the Autonomous District/ Region, is governed by the provisions of paragraph 12. These provisions have undergone significant change in the intervening period. In the beginning, no law of the Centre or the State applied to the Autonomous Districts/Regions automatically by virtue of their having been enacted for the whole country or the State. The power to extend the same to these tract vested with the Governor. Non-action by the Governor implied non-extension of the concerned Acts. The Governor had the power to extend the said laws, as they were or with suitable exceptions and modifications, to the entire tribal area or any part thereof. Thus, the position of the Sixth Schedule in this regard was the same as in the Government of India Act, 1935.

The position, however, is not the same now. The various laws of the Centre and also the State, as in the case of the Scheduled Areas, automatically cover the tribal areas as well. The Governor, however, has the power under paragraph 12(1) to direct that 'any Act of Parliament or of the Legislature of the State of Assam... shall not apply to an autonomous district or an autonomous region in that State or shall apply ... subject to such exceptions and modifications as he may specify....' However, no Act of the Legislature of the State of Assam in respect of any matter for which the District Council has legislative power or concerning certain intoxicants can apply to an Autonomous District/Region unless the District Council concurs and formally so directs.

In the case of the tribal areas given in the Sixth Schedule which are outside Assam, namely, Meghalaya, parts of Tripura and Mizoram there are some special provisions as well given in paragraphs 12A, 12AA and 12B respectively. While the position about the extension of State Laws in the case of Tripura and Mizoram is the same as in Assam, it is totally different for all the three States in relation to Central Laws. The power in the latter case vests with the President alone. Only he can direct that any Act of Parliament shall not apply to the concerned area or shall apply with such exceptions and modifications as he may specify. In Meghalaya, the position of District Councils *vis-a-vis* the State Legislature has got completely compromised. A State Law automatically supersedes the District Council law even without formal consultation.

There are some further special provisions in Part XXI of the Constitution in relation to Nagaland (Article 371A) and Mizoram (Article 371G). According to these Articles, no Act of Parliament in respect of religious or social practices of Nagas/Mizos, their customary laws, ownership and transfer of land as also administration of civil and criminal justice

involving decisions according to their customary law, shall apply unless the Legislative Assembly of Nagaland/Mizoram so decides. Even though there is a special provision in the Constitution for Arunanchal Pradesh as well (Article 371H), it does not give similar powers to the State Assembly of Arunachal. In fact, Arunachal has come to be regarded as any other State and the people there have not even the protective shield of the Fifth Schedule.

(ii) Administration of Justice

The administration of justice in the Autonomous Districts is the exclusive responsibility of the concerned District Council subject, however, to some discretionary powers of the Governor. In the first instance, the provisions of the Civil Procedure Code and the Criminal Procedure Code do not apply to these areas. The Governor, however, may direct the application of certain specific provisions generally or in specified contingencies or for specified areas. Secondly, the District Councils can 'constitute village councils or courts for trial of suits and cases between the parties *all of whom belong to Scheduled Tribes* within such areas.' The procedures and powers of the said Councils and Courts may also be prepared by the District Councils with the prior approval of the Governor.

The position in respect of trial of offences punishable with death, transportation for life or imprisonment for a term of not less than five years under the Indian Penal Code, or any other law, is slightly different. In these cases, the Governor has the discretion to confer on the District/Regional Councils or on any Court constituted by such Councils such powers under the Code of Criminal Procedure as he may deem appropriate for trial of such cases. The condition relating to 'all parties belonging to the Scheduled Tribes' in case of trial of suits and cases in these provisions can also be dispensed with by the President under the sub-para (5) of paragraph 4 in consultation with the Governor. This provision was added in 1970. The appellate jurisdiction in all these cases vests with the District Council. No other Court except the High Court and the Supreme Court shall have jurisdiction over the suits or cases dealt with by the District Council. Moreover, the jurisdiction of the High Court in these matters shall be as may be specified by the Governor from time to time. The Supreme Court of India, however, has unfettered jurisdiction.

(iii) Taxation

The District Councils have substantial powers to levy and collect taxes. Moreover, they have the power to make necessary regulations having the force of law in that regard, which is vital. They include taxes on

(a) lands and buildings,

(b) professions, trades, callings and employment, and

(c) entry of goods in the area.

The District Councils can also levy and collect tolls on persons residing in their areas and also passengers visiting the same. They can levy taxes for maintenance of schools, dispensaries and roads. The assessment and collection of land revenue in accordance with the principles in vogue in the State of Assam are under the purview of the concerned District Councils. Lastly, the District Councils can negotiate under paragraph 9 with the State Government a share in the royalties accruing to the State from licenses or leases, etc., in respect of the minerals in their area.

(iv) Development and Social Services

The District Councils have full powers concerning certain aspects of development and social services such as primary schools, dispensaries, roads and road transport. Moreover, they can make regulations for regulation and control of all activities relating thereto. In the case of primary school, they can also 'prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.'

The Governor may also entrust to the District Council, with its consent, functions in relation to agriculture, animal husbandry, community projects, cooperative societies, social welfare, village planning or any other matter to which the executive power of the State extends.

(v) District Funds, Receipts, Expenditure and Budget

A separate Fund for each Autonomous District and Autonomous Region is to be constituted under paragraph 7. All moneys received by the concerned Council in the course of the administration of the district or the region, shall be credited to this Fund. The Fund is managed in accordance with the rules and procedures prescribed by the Governor. The accounts of the receipts and expenditure are to be kept in the forms prescribed by the Comptroller and Auditor General of India (CAG). They are also to be audited by the CAG. The reports of the CAG are submitted to the Governor who, in his turn, directs them to be laid before the Council.

The District Fund, thus, is like the Consolidated Fund of the State, but with a difference. The District Council has no power to give final approval to its budget and authorise expropriations therefrom. Nevertheless, the preparation of a statement of estimated receipts and expenditure for each autonomous district (not region) in mandatory under paragraph 13. *The estimates are presented to the District Council for discussion before they are forwarded to the State Government for incorporation in the annual financial statement of the State.* The statement of each District Council under Article 202 of the Constitution is shown separated in the State Budget presented to the Assembly for its approval. Thus, the outlay for each Autonomous District in the Budget becomes non-divertable unless specifically approved by the Assembly. Moreover, the outlays for the District Council can be flexibly used by the Council.

Autonomous State for Autonomous Districts

The tribal areas as per the provisions of the Sixth Schedule, thus, are formally endowed with necessary powers in almost all fields, legislative, judicial and executive, to make them really autonomous as a district or a region, as the case may be. Yet a District is after all a district and a District Council a district council. This lowly status may not measure upto the 'aspirations of the people', which in reality is an euphemism for the aspirations of the rising elite in the modernising segment amongst the tribal people. The establishment of the State of Nagaland comprising the tribal area of the erstwhile 'Naga Hills district' in 1962 gave a new fillip to similar aspirations in other hill districts notwithstanding their autonomous status. The idea of creating autonomous State within the State of Assam was mooted largely as an attempt to meet this situation, A new provision for formation of an Autonomous State under Article 244A comprising certain 'tribal areas' in Assam was added in 1969 by the Twenty-second Constitution Amendment Act.

According to this Article, an Autonomous State can be created 'comprising (whether wholly or in part) all or any of the tribal areas specified... in paragraph 20 of the Sixth Schedule.' This Autonomous State, while remaining a part of Assam, could have a legislature for itself as also a Council of Ministers. The law for formation of the Autonomous State may, *inter alia,* specify its legislative field and also its executive powers. It can provide for assignment to the Autonomous State a share in the taxes of the State of Assam. Finally, it can list out the Articles of the Constitution in which reference to State may be construed as reference to the Autonomous State as well.

This special provision, however, had no takers as the people of autonomous districts have been dead set for asserting their identity outside Assam. Reorganisation of the State of Assam followed in 1972. The State of Meghalaya and Union Territories of Arunachal Pradesh and Mizoram, *inter alia,* were created comprising the erstwhile North Eastern Frontier Agency tract and the Hill Districts enumerated in the Sixth Schedule. The struggle in other tribal areas in Assam continues for separate identity on similar lines with not even an allusion to this special provision for Autonomous State.

Financial Outlays for Tribal Areas

A necessary concomitant of the transformation of the traditional system to a modern system is substitution of the variety of services rendered by the members of the tribe, severally and collectively, as a part of their tradition, voluntarily or as an obligation, by paid professional services. Moreover, administration as envisaged under the Sixth Schedule covers all activities of the State including the so-called development and social services. The cost of such schemes of development which may be necessary for raising the level of 'administration' of the tribal areas, in this broad sense, which would necessarily cover the cost of said transformation, is to be *met in full* by the Union Government under the Second Proviso to Article 275(1).

There is a significant difference in this case compared to the Vth Schedule. In their case, the obligation of the Union Government has been set out under the First Proviso of the same Article with a difference. It does not cover the entire cost as in this Proviso, but is limited to *such sums as may be necessary to enable the concerned State* to execute the said schemes. The Union Government, thus, *supplements* the State's effort. In either case, however, full provision of *'necessary'* outlays for all schemes which may be taken up in these areas is *mandatory.* Moreover, it is a Charge on the Consolidated Fund of India. That the cause of tribal welfare in its broadest sense must not suffer *on account of constraint of resources is a clear constitutional mandate.* A similar provision has been made for the Autonomous State referred to above under Article 275(1A).

Autonomy - Traditional and Formal - An Overview

The above review shows that the formal structure of administration envisaged for the 'tribal areas' of Assam is essentially in the image of a State, *albeit,* a State within a State. Moreover, it has some special features as well compared to other States in the country. They have given these areas a unique status in the national polity. Since ethnicity is the main criterion for carving out autonomous districts and autonomous regions under the Sixth Schedule, the District and Regional Councils so established virtually became formal forums for forging closer relationship amongst otherwise loosely associated, or even non-communicating tribes. This, in turn, has facilitated emergence of new identities. Nagaland comprising more than a score separate tribes with almost no relationship in the traditional setting and totally different languages, is the best illustration of this kind. In case a smaller tribe finds itself ill-at-case in a larger conglomeration, it can easily claim autonomy as a region. The Chakma, the Mara and the Lai tribes in Mizoram have a District Council each under the Sixth Schedule. Tuensang district of Nagaland enjoys a special status within that State under Article 271A(2).

The new identities, which are emerging amongst the modern elite in the wake of establishment of the new institution of State, are obviously state-centred. They have a new paradigm of functioning, both in terms of their style and also the values. The traditional tribal councils, on the other hand, are people-centred in all respects, including their very *Being,* their role and its legitimacy as also the authenticity of their actions. As the republic-like system of self governance at the village level has remained strong and unquestioned, the utility of the supra-village formal system to the people is, at best, peripheral. The traditional leadership, therefore, does not have much interest in the formal system. In fact, even if they were to evince some interest, they would not be able to cope up with the peculiar style of its functioning. It is, therefore, the members of the modern, mostly educated elite who come forward to fight elections and to constitute the District/ Regional Councils.

Here is a serious anomaly. While the people, who vote a person to power, have no inkling about what it is all about, the Councillors, in their turn, can claim to speak on their behalf in all formal forums of the State as their accredited representatives. The status of these representatives, who necessarily share the ethnocentric pride of their people, could not but be Number 2 amongst the political leaders of the State, notwithstanding the autonomy enjoined on their district. This fact itself has remained a constant irritant even if other aspects like social discrimination against the tribal people and arrogance associated with money-power were to be discounted.

The idea of Autonomous State also did not work since what could be achieved with a little assertion was already before their eyes in the shape of full-fledged new ethnic States. The District Council, therefore, just proved to be a preliminary stage, perhaps a stepping stone for the formation of separate States in Assam. In fact, the Naga Hills and the North East Frontier Agency tracts had special status from the very beginning even within the Sixth Schedule. They were the first to opt out primarily in assertion of their separate identities. Nagaland became the first ethnic State in India. The other two hill districts of erstwhile Assam also followed suit and in course of time became States of Meghalaya and Mizoram. The North Cachar and the Karbi Anglong are the only two autonomous districts of Greater Assam which are still with Assam. Even they are now desperate to emulate their peers in the hills and become Autonomous States, if not full-fledged States in their own right. In fact, in deference to the sensitivity of the people of these two autonomous districts', their Councils have been specially designated as North Cacher Hills Autonomous Council and Karbi Anglong Autonomous Council under sub-paragraph 3 of paragraph 2 of the Sixth Schedule.

The focus on the larger ethnic tracts in Assam in the form of Sixth Schedule was, to some extent, responsible for the neglect of other tribal areas with mixed population. Bodo territory provides an unsavoury example. The provisions of *'tribal belts and blocks'*, which did not have the potentiality of even the Fifth Schedule, proved to be too weak to protect the tribal interests. It was too late to undo the damage later as other interests got entrenched by the time the Bodos could organise and assert as a people and demand like their neighbours in the hills an exclusive domain for themselves. The ethnic conflicts, cruel and bloody, are continuing with no signs of relenting.

Tripura faced a problem of much larger dimension. The tribal people in this case have been reduced to a minority in the wake of sudden influx from across the border after partition. The tribal people lost substantial lands to the articulate migrants within a short time. The mini-tribal tracts scattered through out the State, in a bid to solve the tangled issue were brought together in 1985 to constitute an autonomous district and included in the Sixth Schedule. The success in this regard, at best, is partial as ethnic conflagration continues unabated.

Anatomy of Autonomy and Self-governance

The model of administration under the Sixth Schedule, so far as devolution of powers and real autonomy are concerned, in a way, is fine and may be an ideal for district-level institutions within a State with some amends no doubt. But the question of aspirations of a people, as they become aware about their identity or are able to forge a new one in a new setting, is different. It falls in the arena of politics, though economics also plays a major role in determining even the political contours. We are witnessing virtually a total failure on this front in the North-East. The question is whether this failure is purely politico-economic or there is something more to it. We will, however, confine our attention to the structure of the Sixth Schedule and find some answers, if possible, to this tricky question.

The essence of self-governance and the real test of its quality is the nature of relationship between the people and formal institutions of the State. The State in the modern world is the synonym of governance *per se*. As we have discussed in detail earlier, what the Sixth Schedule envisages in the name of autonomy for each tribe is the transformation of the fabled traditional system of self-governance of the tribal people into a formal system of self-governance. This transformation was presumed to be in fulfilment of people's aspirations after the transfer of power. This was also the impression given by the so-called people's representatives in the Constituent Assembly. Even those who disagreed with it and have even rebelled against the State, are largely concerned about the inadequacy of 'autonomy' to the formal institutions within the Nation-State compared to what they could aspire to achieve as an independent nation in the global community. What will be the future of republic like village system is hardly a matter of concern of any level.

So far as autonomy within the frame of Indian Nation-State is concerned, the Constitution has to be taken as the best and the only guide. The framing of Constitution was the greatest event after the transfer of power. The Constitution was adopted by 'We, the People' who resolved to constitute themselves into a nation known as 'Indian, *that is* Bharat'. This act of adoption of a Constitution was itself a *formal* act, within a *formal* frame, *formally* setup for a *formal* purpose, by the so-called representatives of the people, *formally* elected in accordance with a procedure *formally* laid down in that regard.

Here is a universe of *'the formals' par excellence.* The resolution of the so-called representatives of the people was *formally* accepted as a resolution of the people with no questions asked, in good faith no doubt. The same premise has been accepted at all other levels down the line upto the village. The *formally* elected *panchayat* became the synonym of the people comprising [illegible] unity in the village.

In this transformation from the traditional to the formal not only the community at the village-level was missed, but the entire system of self-governance in the true image of village-republics got excluded from the new frame. The same was the case with the traditional tribal councils at the group of village level and regional or even higher levels. *In real life situation, however, this formal transformation made no difference so far as the people and their councils are concerned.* The command of traditional councils over affairs in the concerned territories, which had remained undisputed, *de facto,* earlier because of 'exclusion', remained undisputed even under the new regime. The autonomous districts and their councils, as formal artifacts of the State, therefore, had no meaning in general, but particularly so in the vital issues of governance as perceived by the people in the natural course. *These otherwise powerful Councils, as stated earlier, therefore, could not even earn legitimacy amongst the people.*

The driving force in all tribal struggles through out the country has been mostly their deep concern for their System, their traditions, their territory and last, but not the least, the fear of intrusion by outside elements in one or more of these spheres. *The District Council is no exception. In the people's perception it is in the same list as any other exotic institution of the State.* So what we have every where, particularly so in the North-East and that too in an acute form, is virtual confrontation between the people and the State. It gets manifest in numerous forms. The tragedy is that the educated elite, including the people's representatives in various formal institutions, are on the other side. What they say and do is in no way qualitatively different from others in the System. They automatically imbibe the imperialist spirit of '*Trust the System, not the People'*. In fact, even those who are otherwise highly sensitive and deeply concerned about people's side in general, have remained unconcerned about this change in tribal areas.

The change is accepted as inevitable. The pain which the community experiences in the process is taken as 'nothing but birth pangs of an old society pregnant with the new'. The irony in the case of tribal society is that the pain is not related to the birth pangs of an old society pregnant with a new. It is like cries of a child, lovely and loveable, a dream-like image of the future unborn who has to be scarified for the safe delivery of its like in the 'other world'. Is this sacrifice necessary in the case of a society where classes have not emerged and equality and fraternity are still cherished values? Even the revolutionaries would not care to ponder on this question in the midst of raging *'class struggles'* and *'people's war'* in many a sector.

Whither Urban Bodies?

The uni-polar autonomy of the district in the Sixth Schedule, with all powers vested in the District Council, is at variance with the new provisions of Panchayats and Municipalities in Parts IX and IXA of the Constitution both as a concept and also in terms of the underlying basic principles. Firstly, the rural and the urban areas are treated as two different entities

governed by two different sets of provisions in the two Parts. It is the overbearing State which holds the two together through its acts of direction and governance. A link, however, has been established between the two in the new provisions in the form of a District Planning Committee established under Article 243ZD. The role of this Committee is functional, supportive and strictly circumscribed. To quote, the Committee is envisaged 'to consolidate the Plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.' This draft is expected to 'have regard to matters of common interest ... including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation'.

The Sixth Schedule does not admit this dichotomous structure comprising the rural and the urban as separate entities. The jurisdiction of the District Council covers both the rural as also the urban areas. The only exception is the municipal area of Shillong. It has been kept outside the purview of the Khasi District Council in Meghalaya.

New Frame : Multi-tier and Multi-point

As we move to the internal structure of Panchayats in general, the establishment of Panchayats is envisaged at three levels - district, intermediate and village. In the case of small States, that is, a State having less than 20 lakh people, the Panchayats at the intermediate level may be dispensed with. There is some element of hierarchical authority in this arrangement. The District Panchayat is the highest body at the top. Nevertheless that is not the ideal. The ideal has been set out in Article 243C, which envisages endowment of Panchayats at each level with 'such powers and authority as may be necessary to enable them to function as institutions of self-government'. Thus, the devolution of powers has to be specified by the State Legislature for each level. Similar endowment of powers on Municipalities, which include all grades of urban bodies, is envisaged under Article 243W. In sharp contrast to these provisions, the Sixth Schedule leaves every thing concerning the village councils and the town councils including their establishment and their powers to the discretion of the District Council.

The Vital Contrast

The dissonance between uni-polar District Council for the Sixth Schedule and multi-level and multi-point institutional frame for the country as a whole has become much more sharp in the Scheduled Areas after the Extension Act came into force. The 'mistake' (that is the softest term which can be used) of continuing with a *'community-minus'* polity even for the so-called self-governance, notwithstanding the solemn resolve of the Founding Fathers while adopting Article 40, has been corrected in the new Act. It places the community in the village at the centre of the stage in unequivocal terms. The *Gram Sabha*, or the village council in the North-Eastern parlance, is the

basic building block of the new political economy and also the administration. The pity is that the village community got ignored not only in the main provision of the Constitution, *that is,* Article 40, but even in the special provisions for the tribal people, namely, the Fifth and the Sixth Schedules. In their case, the village community is a living institution and is going strong. Their total neglect through omissions in the legal frame has been the main reason for the continuing confrontation between the people and the State in these areas.

The fact that community in the Scheduled Areas is not only living and strong but is managing its affairs effectively in accordance with *its traditions and customs* has been duly acknowledged in the Extension Act with the incorporation of the provision about the *competence of Gram Sabha* in that regard. With this provision about customs and traditions enshrined in the Constitution itself, it is presumed that they shall prevail over anything which is merely formal including the so-called laws of the land. Moreover, all laws will have to be adapted to ensure that they are in consonance with the same. This plenary concept of self-governance at the village level in the Fifth Schedule is antipodal to the ideal of autonomy for the district with an all powerful Council in command in the Sixth Schedule functioning in accordance with the formal laws, regulations and such like, as it may enact.

The Sixth Schedule in Flux

While far-reaching changes have been made in the institutional structure of self-governance at the national level and there is a revolutionary turn about in the Scheduled Area, the position in the Sixth Schedule areas remains unchanged. Like the Scheduled Areas, the tribal areas in the Sixth Schedule as also the states of Mizoram and Nagaland and the Hill Areas of Manipur have been kept outside the purview of the provisions of Part IX and Part IX A of the Constitution. In the case of the tribal areas of the Sixth Schedule, the responsibility to extend these provisions with suitable exceptions and modifications, as in the case of Scheduled Areas, is that of Parliament. In the case of other States, the responsibility rests with the concerned State Legislature. The only tribal State to which the said provisions apply as they are, with no provision for exceptions and modifications, is Arunanchal Pradesh. Other tribal areas in the North East as also outside the Scheduled Areas in rest of the country fall in the same category.

No action to extend these provisions has been taken so far by the Parliament with regard to the tribal areas in the Sixth Schedule or the Legislatures of the concerned State Legislatures in the North-East concerning their areas as per the provision in Article 243M. The second Committee of Select Members of Parliament and Experts (Chairman : Dileep Singh Bhuria), while deliberating about necessary exceptions and modifications in the provisions concerning Municipalities in Part IXA in their application to the Scheduled Areas under Article 243ZC, considered[148] some of the issues relating to the Sixth Schedule as well. The Committee noted two major weaknesses in its

structure, *viz.*, the total dependence of the District Council on the State for funds and the total dependence of village councils even for its formal recognition on the District Council. The Committee was of the view that the entire structure of the Sixth Schedule and relevant provisions for other tribal areas in the North-East need a through review, particularly in the context of latest changes in the Constitution. No action has been taken by the Central Government or the concerned State Legislatures in this regard so far. In fact, even the recommendations of the second Bhuria Committee concerning Municipalities in respect of the Scheduled Areas remain unattended. The Report was submitted to the Government of India on 19.7.1995. There is, thus, legal vacuum about Municipalities in the Scheduled Areas. *The Municipalities now functioning in these areas do not have the authority of law and are unconstitutional.*

New Areas of Conflict in the Sixth Schedule

Our review shows a queer situation in the tribal areas in the North-East. The powerful, almost state-like, autonomous frame of District Council has remained irrelevant for the people with strong traditional Councils of theirs in the village and above. However, that frame has played a positive, nay, a vital role in protecting the traditional system against the possible inundation of the areas with exotic laws of the State and the Centre as happened else where in the country and even in some parts of the North-East. The sentiments of the people about their identity and tradition have been the most potent and moving force behind their struggles in various forms. The same have been used by the new elite for their political advancement, but, alas! with little concern for the real concerns of the people.

Such a situation obviously cannot continue indefinitely. Eventhough the formal institutions of the State, including the District Councils, did not make a dent in the traditional system of self-governance, the flow of money in the name of development and other forms did have its impact which is bound to have far-reaching implications. The impact can be imperceptible and innocuous for the time being. The legendary leader of Nagas, Phizo, is said to have warned his people *'You can face the bullets of the armed forces, but can you face the volleys of money power?'* Answer to this question alone will determine the future of Nagaland'. The most serious concern of responsible tribal leaders everywhere currently is their inability to contend with and to counter money power which is having malefic impact on their social and economic life of the tribal people in a free-for-all style.

The legislative powers of the District Councils no doubt have so far remained inconsequential in the face of strong tradition which is the only guide of the people in their day to day life. Nevertheless, the elected representatives cannot remain oblivious for long about the nature and potency of those powers. The realisation about the significance of this legislative power cannot but be a matter of time. It is particularly so in those cases where the change may serve the interests of the modern elite. It may be so even if the

move were to be in derogation of the interests of the ordinary people. Some dissonance of this kind is brewing in Meghalaya which will illustrate the significance of legislative powers of the District Council as a possible source of conflict.

All major tribal communities of Meghalaya, the Khasis, the Garos and the Jayantias, are matrilineal. It is in contrast to the prevailing patrilinial system everywhere else. The youngest daughter has special responsibilities in the family. It is her duty to ensure that everyone in the family is happy and is well-looked after when in distress. She is also the sole inheritor of the family property, gold and land included. The male members of the family have influence in their parental homes as *mamas* (maternal uncles) but they are inconsequential in their wife's families. The menfolk from Meghalaya have been claiming that they comprise the weaker sections of the community, like womenfolk elsewhere. They have been pressing for equal rights with the daughters in the family property.

A special feature of Meghalaya's political scene is that women have kept away from that arena. It is so primarily because the representative institutions, in the perception of the people, are inconsequential. The village *durbar,* amongst the Khasis, for example, continues to manage all affairs of the *village* in accordance with their traditions and customs with no voices of dissent either from the males or the females. Moreover, the women themselves claim that they are engaged in the serious task of managing the family. Therefore, they have little time or inclination for adventures of political life outside.

The traditional ethos is no doubt strong on the ground in the real sense. Yet the formal authority of making laws concerning the customary law of the people including inheritance is with the District Council. This authority includes the power to create necessary space in the formal system for their customs and traditions and also the power to make amends therein as the Council may decide. In fact, some attempts have been made to codify the customary laws of the tribal people with serious implications discussed earlier. It is also true that these so-called representatives of the people at the moment may not dare to do any thing which may go against their tradition and may not find favour with the people. With comparatively smaller constituencies for the District Council in this area, the people's representative tend to behave responsibly and go along with the people's perception. This is in sharp contrast with the situation in larger constituencies elsewhere. In their case, there is little direct interaction on a day-to-day basis between the people and their representatives. It is *vidhayak raj* there, not the peoples' *raj.*

The situation in qualitatively different in the District Councils in Meghalaya. They are formally the custodians of the social customs and traditions and have the power to make any amends therein. The tradition is all for inheritance by the youngest daughter with no rights for the male

members except to seek protection and accommodation in case of distress. It is this 'weaker section' comprising the menfolk which commands the exclusive domain of the District Council. This 'power elite' comprising exclusively the 'weaker group', with not a single person from the other side, is said to be finding the tradition concerning inheritance anomalous. The District Council is also the sole authority to legislate there on. But will the Council be able to do so? The chances are that even if the District Council were to venture to legislate, following what they consider as the equity norm, the same may be rejected by the people in general and even by the all-male *village durbars* in particular. Thus, a conflict situation may arise between the District Council and the people in Meghalaya which may be difficult to get resolved in the present frame.

The above case brings to the fore the inherent contradictions intrinsic to any schema for establishing a formal system to supplant the traditions and customs of a people. The provisions of the Extension Act are guided by a different perspective. They aim at discounting this possibility of conflict with the acknowledgement of the living tradition of the community in a face-to-face setting as the highest form of self-expression in a democratic polity. There is no other way to rule out the possibility of malefic fall out of a centralised polity, even within the bounds of a district. This new model of the Scheduled Areas can be emulated with advantage in the Sixth Schedule and also other tribal areas. It will undoubtedly reinforce the democratic polity at the mass-roots.

Beyond the Gram Sabha : Outlines of a Model

With the review of the two schemes of transformation from the traditional-informal to the modern-formal as envisaged in the Fifth and the Sixth Schedules, as also the recent developments in the Scheduled Areas and elsewhere, we may now attempt to draw the broad outlines of a possible model beyond the Gram Sabha for the Scheduled Areas. In this exercise it may be noted in the very beginning that 'particularisation, *not* generalisation' and 'flexibility, *not* rigidity' comprise the moving spirit of the Fifth Schedule. *There can be no formula-approach in dealing with the extremely complex and sensitive issues of transformation in the tribal areas.* For example, the Legislative Assembly of Madhya Pradesh, a State having one-fourth of the total tribal population in the country, passed an unanimous resolution in 1993 recommending adoption of the Sixth Schedule for the entire Scheduled Area of the State. The well meaning Resolution, however, is indicative of a search for instant ready made solutions to the complex problems, without even caring to know what they really mean. The euphoria for and the commotion against the Resolution were also results of the same malady. (See A Note on Resolution for Sixth Schedule in M.P. - Annexure 5).

Any model of transformation in the tribal areas has to be indicative, not prescriptive, both in terms of its structure and also the pace of change. But the model must be clear and unequivocal in respect of basic premises and direction of change. Therefore, the Sixth Schedule, or for that matter any given structure, cannot be accepted as sacrosanct. It can be taken as a model for guidance but with a clear proviso that such elements, if any, as may be incongruous with the basic premises must be suitably adapted and even could be rejected outright wherever necessary.

(i) Transformation : Selective, Tradition-Compatible and Non-Centralised

The wholesale transformation of the traditional system into a totally centralised polity as envisaged for the Tribal Areas in the Sixth Schedule is at total variance with the tribal tradition of republic-like village-communes with active and uninhibited participation of all members, which also continue, to be egalitarian to a large extent. The institution of District Council, and even the statehood, which most of them have acquired and others are clamouring for, have remained superficial and unacceptable to the people. It is so notwithstanding the obsessive fervour amongst the elite in their favour. The inevitable result is growing confrontation between the people and their traditional bodies on the one side and the State and its institutions including the District Councils on the other.

The scheme of the Sixth Schedule in its present form cannot be accepted for the Scheduled Areas if the experience on its home wicket has any lessons to learn from. Moreover, it has to be remembered that the scheme of the Sixth Schedule was designed for the most favourable setting of homogeneous single-tribe tracts. The situation in the plains of Assam itself in quite complex with substantial mixed population, let alone the Scheduled Areas where both intermixing of different tribes amongst themselves and influx from outside have been very heavy in many cases.

The first premise in any scheme of transformation in this situation, therefore, has to be that *the system must be built on what exists on the ground.* It essentially means that suitable space should be created for the traditional system in the proposed formal structure rather than attempting to supplant the same as envisaged in the Sixth Schedule. The tragic consequences of the acts of omission and commission in relation to the Scheduled Areas, in whose case there was no such compulsion and a gradual progression was possible, also point in the same direction. It is true that the overbearing presence of the modern State, which is a formal institution *par excellence,* cannot be ignored. In fact, what we are discussing here is very much in the context of the phenomenon of State and, what is significant, also at its behest.

The State in the ultimate analysis is a formal expression of the people's will. It must, therefore, subserve *their* interest as per *their* perception. The exclusive reserves, for example, created for the Jarawa tribals in the Andaman and Nicobar Islands, who are totally oblivious of even the existence of the Indian State, is in response to the said obligation. It has been accepted by the State in respect of those people who are deemed to be its citizens, notwithstanding their ignorance. They enjoy, therefore, inviolable Constitutional as well as human rights. Similar was the situation before independence in many a tribal tract. It is also a fact of life in many of them even today. Nevertheless the formulation of total 'exclusion' of this nature has to be a rare exception and, what is important, transient. A suitable interface between the traditional system and the modern State, therefore, has to be designed which may enable the former to assimilate benign elements from the modern world. It should oblige the latter to adapt itself to ensure that it is tradition-compatible and that the two work in harmony. They should reinforce the activities of each-other and assume complementary roles wherever necessary.

The basic unit of any social system is the face-to-face community in its natural habitat. This community in the spatial frame of a habitation or a group of habitations, as the case may be, has to be treated as the basic building block of a democratic polity. As the communities have been managing their affairs in accordance with their respective traditions and customs even before the rise of the State, necessary space has to be created for the traditional systems of self-governance in the formal frame of the State as well. In fact, *the tradition is the highest form of democratic law subject, however, to its being compatible with the Constitutional values and human rights.* This compatibility has to be accepted as an axiom now that the community and its tradition have been enshrined in the Constitution as a part of the formal system of the State.

The main concerns of the traditional systems of self-governance are related to the identity of the community. This is inexorably intertwined with its command over the resources on which people subsist for their living. Moreover, resolution of disputes and maintenance of order are also intrinsic to and natural concomitants of a community. These elements comprise the basic parameters of a self-governing system which have to be honoured by the State.

But no self-governing system can function in isolation. The tradition, therefore, everywhere has given rise to institutions in the form of councils or assemblies at a group-of-village, say *pargana,* level. In some cases, there may be one or more tiers even beyond the group of villages. The system of self-governance at the village level as proposed above, will be incomplete, nay fragile, without a council, traditional or otherwise, at the group-of-villages level which can provide a larger frame

of reference for the primary units. The areas of concern of these Councils will be the same as that of the self-governing system at the village level.

As we move away from the scene at the village level, the interlinkages become complex and are bound to acquire formal character. It is here that the role of State begins. It becomes increasingly prominent as we move farther away from the people. The guiding principle even in this formal institutional frame has to be that whatever cannot be done at a level nearer the people only should be the concern of an institution at the next higher level. A system built on these principles will comprise a reasonable base for a non-centralised polity.

Thus, *the main concern in the tribal areas is to build from below on the foundation of the traditional system.* The process elsewhere in the country is the other way round. We have a centralised State with governments at the Centre and the States. The State functions with the aura of omnipotence. The Constitution envisages establishment of institutions at lower levels upto the village so that this authority of the State can be reasonably shared and the centres of power are nearer the people. In fact, these institutions are to be *endowed* with such powers and authority as may be necessary to enable them to function as units of self-government. The frame of self-governance even in these cases at each level, therefore, can be as comprehensive as that of a virtual State, as is the case with the District Councils in the Sixth Schedule. The present frame in their case, however, is largely limited to the so-called developmental and municipal functions. *The substantive issues of governance are the exclusive preserves of the State authorities outside the pale of local self-government.*

As we have discussed earlier, it is this centralised structure which is completely out of tune with the tribal ethos. This fact has been taken note of in the Constitution. That is the rational for the provision about extending the general provisions to the Scheduled Areas and the Tribal Areas with suitable exceptions and modification. A partial exercise has been done for the Panchayats in the Scheduled Areas by the Parliament. It remains to be completed by the State Legislatures. So far as urban areas are concerned, necessary steps have not been taken even by the Parliament.

In sum, the following are the important features of a people-centred transformation of the traditional system within the larger frame of the modern State including the Panchayati Raj Institutions—

(i) Necessary space should be created within the formal structure of the State for the traditional system of self-government at the village and the group-of-villages level.

Note : Specific provision has already been made in the Extension Act for the community at village-level in the form of

Gram Sabha. It will be necessary to add a provision for a *Paragana* (a group of villages) *Council* as a forum for attending to inter-village issues concerning management of resources and resolution of disputes. There should be no scope for interference in any form whatsoever in under their purview matters by any formal institution unless specifically provided for by law.

(ii) The functions of the District Council, which should unequivocally exclude those of the Gram Sabha and the *Paragana Council* referred to in (i) above, may be assigned to the Panchayats at the district and the intermediate levels with suitable exceptions and modifications as may be considered necessary in the light of the principles and premises which flow from the discussion which follows. The Gram Panchayat, however, shall be answerable to the Gram Sabha, and the Gram Sabha alone.

(ii) Single frame for Rural-Urban

The dual structure with exclusive institutions for the urban and the rural areas as envisaged in Parts IX and IXA is not suitable for the Scheduled Areas. The Bhuria Committee on Panchayats, therefore, had recommended[149] that urban bodies in the Scheduled Areas 'should function under the overall control of autonomous district councils'. This proposition was reiterated by the second Bhuria Committee on Municipalities while recommending exceptions and modifications in Part IXA in its extension to those areas. The Committee analysed in depth the socioeconomic situation of these areas and made pointed reference to the fact that urban centres 'which should function as growth centres, tend to become centres of exploitation. They may even wield stranglehold on their economy leading to pauperisation of the people'. The Committee further observed[150] that '... instead of having rural-urban continuum, as is generally the case elsewhere, the urban centres are totally isolated socially and are domineering economically and politically'. The Committee, therefore, cautioned that 'such a pattern of growth in the Scheduled Areas cannot be expected to lead to harmonious development imbued with the ideals of justice, equality and fraternity. It is bound to result in antagonistic relationship. It is not in the interest of either the tribal people and the urban centres or of an orderly regional and national development'. These centres, therefore, have to be brought under the discipline of the larger polity of the region.

As the provisions concerning urban bodies have not been extended to the Scheduled Areas, there is legal vacuum there in this regard. Nevertheless so far as the question about exclusive domains of the urban and the rural bodies is concerned, the Extension Act

makes the position clear and unequivocal by commanding adoption of the pattern of administration of the Sixth Schedule in respect of Panchayats at the district level. The urban bodies in the Sixth Schedule are not only under the control of the District Councils but fall within their legislative jurisdiction. It follows that the District Panchayats should have full command over all affairs in the district including urban bodies, if any.

(iii) Planning for the District - A Unified Frame

The prevailing confusion and also the iniquitous relationship between the urban and the rural areas which tend to be reinforced because of exclusive domains of the urban and the rural bodies, particularly in relation to the use of resources in the zones of urban influence, have been sought to be resolved through establishment of a Committee for District Planning under Article 243ZD. The rural areas have the obvious advantage of numbers in this Committee which could be used to influence that adverse relationship. But this link is rather feeble in general. It is particularly so in the Scheduled Areas, where the power equations are heavily loaded in favour of the urban. The significance of the special provision under Section 4 (o) of the Extension Act discussed above, which places the District Panchayat at the top of all local bodies including municipalities, has been missed by all State Legislatures. No action has been taken in pursuance of the spirit of that provision in any State. On the contrary, coordination through the Committee for District Planning has been accepted as a norm even for the Scheduled Areas without any consideration for the complex situation prevailing there.

The Madhya Pradesh Legislature has gone off the tangent on this vital issue in the Zila Yojna Samiti Adhiniyam, 1995. The Legislature, while amending the Adhiniyam in 1999, did not even note the fact that the Adhiniyam goes against a specific provision of the Extension Act, not to speak of the general schema of the Sixth Schedule whose adoption in full was unanimously resolved by the same Legislature for the entire Scheduled Area in the State. The District Planning Committee has a Minister of State, nominated by the State Government, as its Chairman. Moreover, the 1999 amendment authorises the State Government to allot to the Committee 'such powers as may be notified.... in respect of the business of the Government'. The Committee has been informally designated as *Zila Sarkar*.

A Committee with a Minister as its chairman and the added aura of *'Zila Sarkar'*, acting on behalf of the State Government in the arena of *allotted* functions cannot but be an independent authority in the district in its own right. Such a Committee cannot be a mere *Committee for District Planning* as envisaged in Article 243ZD

notwithstanding its nomenclature and the avowed objectives of the said Adhiniyam. The District Planning Committee according to Article 243ZD is to *assist* the District Panchayats and Municipalities by coordinating their planning effort, suggesting rational use of resources and preparing a draft of the district plan. The Committee in M.P. blatanly transgresses this Constitutional mandate. The statue itself mentions that the Committee while exercising powers on behalf of the Government 'shall be deemed to be a body subordinate to the State Government'. Thus, it clearly undermines the position of the Panchayat as an institution of self-government at the district level. Decentralisation, the avowed objective of *Zila Sarkar*, is welcome. But if that spirit of the Constitution is to be honoured, no authority other than the District Panchayat can don that crown even in the general areas. In the case of the Scheduled Areas, it is a clear violation of the Constitutional mandate concerning the District Panchayat in Section 4 (o) of the Extension Act.

The provision concerning the District Planning Committee, therefore, will have to be suitably adapted when the provisions of Part IXA of the Constitution are extended to the Scheduled Areas. This Committee shall be a Committee of the District Panchayat and nothing more. Its role will be to assist the District Panchayat in planning and such other functions which the District Panchayat may assign to it *in its discretion* from time to time.

(iv) Development and Social Services

The scheme of assignment of specific powers to the District Council in the Sixth Schedule is superior to the recommendatory devolution in respect of development and social services with reasonably large illustrative lists in the 11th and the 12th Schedules. Moreover, the Extension Act has assigned many items therein, and many more, to the Gram Sabha exclusively and or in conjunction with Panchayats at appropriate level with due caution against centralisation. There is a clear provision to ensure that 'the Panchayats at higher level do not assume the powers and authority of any Panchayat at the lower level or the Gram Sabha'. The Gram Sabha in this Act occupies the centre of the stage with plenary powers under Section 4 (d). The role of the District Panchayat, therefore, will have to be largely supportive within the district frame but with a clear statutory base. This arrangement will be qualitatively different from the current practice in other areas in whose case, the envisaged 'devolution' has been construed by the State Legislature as authorising the Government to delegate such functions and power as it may deem fit from time to time.

Taxation and District Fund

The provisions of the Sixth Schedule concerning taxation are superior to the general provisions of Panchayat Raj In the former case, the District Council has the powers to make regulations subject, however, to the approval by the Governor. In the general provisions, the power of taxation is subject to the rules which may be prescribed by the State Government. Similarly, the provisions about District Fund in the Sixth Schedule are superior to the general provisions in that regard. The operation of the District Fund acquires legislative sanction as it is presented as a distinct item in the State Budget. Madhya Pradesh is moving on the same lines with the decision to show separately the budgetary provisions for all districts in the State. What form it takes in practice is still to be seen.

Legislative

The provisions in the Fifth Schedule concerning framing of regulations and amendment of laws are comprehensive. In this case the necessary powers vest with the Governor. In the case of the Sixth Schedule, however, the District Council itself has legislative powers in many vital areas like management of land as also social matters. The background perspective in this case, however, relates to a single tribe tract. This is not the case in bulk of the Scheduled Areas in the country. Therefore, it will not be practical to have a scheme of legislative jurisdiction on similar lines for the District Panchayats in the Scheduled Areas. The District Panchayats may, however, be empowered to make regulations in respect of money-lending, trading and other items as in the Sixth Schedule.

The scheme of regulation-making is para 5 of the Fifth Schedule is area-specific with the clear objective of adapting the formal legal frame with reference to the precise socioeconomic situation in each locality, if necessary. The present frame of the Fifth Schedule has not been able to achieve this objective largely because of the way it has been operated. With the Panchayats at the District level coming on the scene as units of self-government, it will be apposite to assign these institutions a role in regulation-making. A provision, therefore, may be made to enable the Panchayats at the District or the intermediate level to propose any change in any law or propose a new regulation in general or specific to its area in relation to any aspect of peace and good governance in general and for welfare and protection of the people in the area in particular. The proposals in that regard may be placed before the Tribes Advisory Council which may recommend the same to the Governor with suitable changes as may be deemed necessary.

Administration of Justice

Dispute resolution and 'administration of justice' are integral parts of community life. They are performed by informal bodies like tribal councils or village panchayats in accordance with the traditions and customs of the concerned people. This role of the community, which got eclipsed during the British Rule and has a remained so even afterwards, has been retrieved in the Scheduled Areas under the Extension Act from the formal system of the courts in favour of the village community in the form of Gram Sabha. However, its scope remains to be defined. It can be expanded in stages because the formulation is open-ended. The provisions of the Sixth Schedule in paragraph 4 may be taken as a model for emulation but with a provision for two-tier informal structure for the village and the pargana which may simulate the traditional system in each area.[151] *The elected panchayats at any level can have no role whatsoever to play in dispute resolution for the simple reason that they are formal institutions.* If a formal institution has to have a role in this matter, the best bet in that case will be the Court itself. Moreover, the residual matters may continue under the exclusive jurisdiction of the concerned Courts of Law.

Annexure - 1

(Ref. p. 64)

Geographical Area Initially Scheduled in 1950 in different States alongwith Total Population and Tribal Population as per 1951 Census

State	Area in square miles	Total population	Scheduled Tribe population	Percentage of col. 4 to col. 3
(1)	(2)	(3)	(4)	(5)
Andhra Pradesh	11,342	8,20,384	7,67,000	93.0
Bihar	15,611	58,65,675	24,57,993	41.9
Madhya Pradesh	25,652	28,12,168	16,86,464	59.9
Maharashtra	9,380	13,46,113	7,33,948	54.5
Gujarat	6,917	15,76,086	9,93,653	63.0
Orissa	22,014	32,29,049	15,22,527	47.0
Punjab	4,700	11,423	2,661	23.2
Rajasthan	4,077	7,31,986	4,45,394	60.0

These areas extend over 99,693 sqmiles and cover a tribal population of 86 lakhs (1951 Census)

Annexure - 2

(Ref. p. 65)

Additional Areas suggested by State Governments for declaration as Scheduled Areas and the Tribal Population Involved

State	Area in square miles	Total population	Scheduled Tribe population	Percentage of col. 4 to col. 3
(1)	(2)	(3)	(4)	(5)
Gujarat	2,833	9,18,991	5,62,493	61.2
Kerala	1,064	1,76,129	1,12,000	63.5
Madhya Pradesh	14,840	...	18,00,621	...
Maharashtra	10,194	11,57,722	6,78,517	58.6
Orissa	7,100	8,93,053	3,75,395	42.9
Punjab	112	5,514	...	...
Rajasthan	9,804	14,58,594	8,63,748	59.0
Andaman and Nicobar Islands	1,036	14,691*	+ —	...
Himachal Pradesh	4,228	87,866	83,866	95.0
Manipur	7,686	2,46,148*	+ —	...

In Assam even the plain tribals have urged for scheduling of their areas. Assam is already faced with perplexities in the Hill Districts and Cachar.

* 1961 Census figures + Non-available

Annexure - 3
(Ref. p. 79)

Statement of Objects and Reasons

With a view to intensify tribal development effort in the Fifth Plan, all areas with more than 50 per cent tribal concentration, besides the existing Scheduled Areas, have been delineated in various States and Union territories. Special programmes have been prepared for these areas under Tribal Sub-Plans. Each States has quantified the level of investment in the Sub-Plan areas from the State Plan. In addition, Special Central Assistance of Rs. 200 crores has been set apart for tribal development during the Fifth Five Year Plan period.

2. According to the new approach, specific programmes are to be prepared for each project area keeping in view its special problems. The Sub-Plan also accords highest priority to elimination of exploitation including tackling the problem of land alienation, bonded labour, indebtedness, etc. The Fifth Schedule to the Constitution makes special provision for the administration of tribal areas and provides a broad and flexible frame for effective legal and administrative action. The powers under the Fifth Schedule can be used for effective implementation of developmental programmes and promptly tackling the problem of exploitation in various forms. A review of the Sub-Plan areas in States having Scheduled Areas shows that while bulk of the Sub-Plan area is covered under the Fifth Schedule some areas are outside. This presents an anomalous situation since effective simultaneous action cannot be taken throughout the Sub-Plan area. It is, therefore, considered desirable that the area presently covered under the Fifth Schedule may be rationalised so that the Scheduled Area may cover the entire Sub-Plan area in these States.

3. Under paragraph 6 (1) of the Fifth Schedule to the Constitution, the President may by order declare any area as a Scheduled Area, and under paragraph 6 (2) he may alter the existing boundaries of the Scheduled Areas but by way of rectification alone. In order that the Sub-Plan areas may be declared as Scheduled Areas it is necessary to empower the President to increase the area of any Scheduled Area in any State. The present Bill seeks to achieve this purpose.

—K. Brahmananda Reddi

Appendix VI
(See paragraph 8)

Correspondence regarding interpretation of Article 275 of the Constitution

(1) Letter No. FC.5 (6)-A/56, dated the 13th July 1956 from Shri H. B. Bhar, Secretary, Finance Commission, to the Secretary to the President of India.

In the terms of reference to the Finance Commission as notified by the order of the President dated 1st June 1956, it would seem that only the grants under the main part of article 275 (1) are included. The Commission is tentatively of the opinion that clause (2) of article 275 covers not only the substantive part of clause (1), but also the two provisos appended to it.

2. If the above interpretation by the Commission of article 275 is acceptable to the President, and if the terms of reference as they stand are not intended to include grants under the two provisos to clause (1) of that article, it is requested that the President may be pleased to issue necessary orders to enable the Commission to make recommendations regarding the grants under the provisos to article 275 (1).

(2) Letter No. F.15 (7)-B/56, dated the 16/17th October 1956, from Shri H. M. Patel, Secretary to the Government of India. Ministry of Finance, to the Secretary, Finance Commission, New Delhi.

I am directed to refer to your letter to the Secretary to the President, No. FC.5 (6)-A/56, dated the 13th July 1956 regarding the terms of reference of the Finance Commission as notified by the Order of the President dated the Ist June 1956 and to say that the presumption of the Commission that clause 4 (b) of the Order has reference only to the substantive part of clause (1) of article 275 of the Constitution is correct. As regards the question whether clause (2) of article 275 covers, not only the substantive part of clause (1), but also the two provisos appended to it, the President is advised as follows.

2. The duty of the Commission to make recommendations to the President is in respect of grants-in-aid as to which Parliament can make a law under clause (1) of article 275. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute carves out an exception to the main provision to which it has been enacted as a proviso. *The effect of provisos to clause (1) is thus to carve out an exception to that clause by taking away the power conferred on Parliament under its substantive part, so far as grants-in-aid covered by the said provisos are concerned. As the payment of such grants is made obligatory by the Constitution itself, Parliament is not given any power to make law in respect thereof.* Further these provisos do not even contain any mention about Parliament making law regarding grants covered by the said provisos, nor about the President making order in respect thereof. Consequently the power of Commission to make recommendations to the President under the Proviso to clause (2) of the article does not extend to such grants.

3. This view was, by implication, accepted by the first Finance Commission whose terms of reference under article 275 referred only to the substantive part of clause (1) of the article. It is reinforced by practical considerations also. For example, the Finance Commission can have nothing to recommend in regard to the specific grant under clause (a) of the second proviso as it involved only an arithmetical computation. The quantum of the other grants mentioned in the Provisos depends on schemes to be approved by the Government of India and *it is open to the State to sponsor schemes at any time and not necessarily once in five years, being the period during which Finance commission is normally constituted under article 280 of the Constitution. In other words, the approval of the schemes and the grant of financial assistance for them go together,* and since this is a continuous process, it is but appropriate that these matters are left to be dealt with between the Government of India and the Government of the States without bringing the Finance Commission into the picture.

4. The President, therefore considers that no order need be issued asking for the Commission's recommendations regarding the grants under the provisos to article 275 (1).

(Emphasis added)

Annexure - 5
(Ref. p. 160)

Confusion about 'Sixth Schedule' in M.P.

The Legislative Assembly of M.P. passed a unanimous resolution in 1994 that the provision of the Sixth Schedule may be extended to the entire tribal tract of the State including the Schedule Areas therein. In the background was a resolution of the *Adivasi Vikas Parishad* which was adopted by it in its national conference held in Delhi in 1992. The Resolution commended to all State Governments to emulate the provisions of the Sixth Schedule for the tribal areas in their respective States. It was possible to do so within the frame of the Fifth Schedule without any amendment therein because its frame quite comprehensive to accommodate the necessary changes.

The Government of M.P., in pursuance of this Resolution, appointed a Committee to examine the proposition and make suitable recommendations. The Committee visited some of the North Eastern States and was impressed by the tribal situation in the region. The reason for the difference, according to them, was not far to seek. The Sixth Schedule was the key ingredient. The Committee, therefore, recommended its adoption in toto for all tribal tracts of the State. The Government of M.P., following the recommendation of the Committee, brought a resolution before the Legislative Assembly. There was an impression that the panacea for all tribal problems had been found. All political parties without exception, therefore, eulogised the proposal and adopted the same . The Resolution was forwarded to the Union Government for necessary action .

In keeping with the prevailing culture of delving in generalities, and quest for instant formula-remedies without caring even to examine the nature of the problem, the administration took the easy course of toeing the political line without even the minimal homework concerning its implications and even the legal niceties. In fact, no one cared to look at even what the Sixth Schedule was all about. The panacea-message of the Resolution was picked up by the media with gusto. The news spread like wild fire particularly in Bastar, a tribal district larger than the State of Kerala in geographical expanse.

That the Sixth Schedule was in vogue in the North-East also got highly publicised. This region in people's perception is generally associated with the images of Nagas, Mizoes and, of late, the Bodoes. These areas are also associated with the inner-line regulations which means stringent restrictions on non-tribals including ownership of property, trading, and even physical movement with the possibility of their externment always hanging like the Democles' sword. The message of the Sixth Schedule, therefore, created an unprecedented euphoria amongst the simple tribals, who were harassed and oppressed as never before after the demise of Maharaja Praveer of Bastar with no rallying point for protecting their interests. The reaction on the other side was simple scare, no one knowing even in general terms what the Sixth Schedule meant.

The Sixth Schedule became a cult symbol in no time - *'Protection of tribal interests and banishment of the hated outsider'*. A silent wave permeated the hills and forests. The urban centres on the other hand were simply rocked with property prices recording a nose-dive decline with no takers.

A few vital points were totally missed. The mere resolution of the State Legislature was virtually meaningless. The scheme of Article 244 of the Constitution makes a clear distinction between the status of the tribal tracts in the erstwhile greater Assam and the mainland. The distinction is basic and relates to the specific sociopolitical situation in the two theatres. The North-East comprises tracts which are largely inhabited by single ethnic groups with the traditional system of self-governing remaining intact. Their economy is still simple and largely pre-agricultural. In the case of main land tribal tracts or even within the state of M.P., single community tracts are rare exceptions with a high degree of intermixing both amongst different tribal communities and also vis-a-vis the non-tribals, many of whom may be indistinguishable from the tribal people. The frame of the Sixth Schedule created for homogenous tribal tracts obviously would not suit the mixed population scene of the mainland.

This basic difference cannot be wished away. Moreover, any change in the scheme of Article 244 would require a constitutional amendment. No one cared to consider that such a basic change cannot be effected for one State, much less a few selected tracts therein, as was projected by many a protagonist of the proposed change.

Similarly no one cared even to verify that inner-line regulation is not a part of the scheme of the Sixth Schedule. In fact, there are no inner-line regulations in Meghalaya which is wholly covered by the Sixth Schedule. Nagaland and Arunachal Pradesh, which are not under the Sixth Schedule, have stringent inner-line regulations. Some of the Sixth Schedule Areas have inner-line regulations as well.

The confusion in the public mind was so deep that the Extension of the Provisions of Panchayats to the Scheduled Areas through the 1996 Extension Act was taken as imposition of the Sixth Schedule with sharp reaction in many urban centres. Even though now there is better appreciation of the new law, yet the early antagonism still persists. The ploy generally relates to the special provisions for not less than 50 per cent reservation in the panchayats at all levels irrespective of the proportion of tribal population and for total reservation in the posts of their chairpersons. The logic of these special provisions is simple. It is the predominantly tribal areas, which were treated as excluded and partially excluded during the British rule, many of which were scheduled after independence. In some cases, for a variety of reasons, largely because of the default on the part of the executive, the demographic structure has changed largely in the wake of heavy influx from outside. The special reservations seek to protect the political rights of the people who have otherwise experienced serious set back on the economic front. In the emotionally charged atmosphere, the real message of the radical change at the village level, knowing no difference of castes, creed, ethnicity and such like, that of laying the foundation of a truly participative democracy, has remained unappreciated and unrealised.

PART- II

Relevant
CONSTITUTIONAL PROVISIONS

Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and unity and integrity of the Nation.

In OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Part III

FUNDAMENTAL RIGHTS

General

12. **Definition.**— In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

13. **Laws inconsistent with or in derogation of the fundamental rights.**— (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(*a*) "law", includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(*b*) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.

Right to Equality

14. **Equality before law.**— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. **Prohibition of discrimination on grounds of religion, race. caste, sex or place of birth.**— (1) The State shall not discriminate against any citizen or grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(*a*) access to shops, public restaurants, hotels and places of public entertainment; or

(*b*) the use of wells, tanks, bathing ghats, roads and places of public

resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent of State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

16. Equality of opportunity in matters of public employment.— (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

17. Abolition of Untouchability.— "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

18. Abolition of titles.—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

19. Protection of certain rights regarding freedom of speech, etc.—

(1) All citizens shall have the right—

(*a*) to freedom of speech and expression;

(*b*) to assemble peaceably and without arms;

(*c*) to form associations or unions;

(*d*) to move freely throughout the territory of India;

(*e*) to reside and settle in any part of the territory of India; and

(sub clause (*f*) omitted w.e.f. 20.6.1979)

(*g*) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (*b*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (*c*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clause (*d*) and (*e*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interest of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(*i*) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(*ii*) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

20. Protection in respect of conviction for all offences.—(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of magistrate.

(3) Nothing in clause (1) and (2) shall apply—

(*a*) to any person who for the time being is an enemy alien; or

(*b*) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(*a*) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (*b*) of clause (7); or

(*b*) such person is detained in accordance with the provisions of any law made by Parliament under sub-clause (*a*) and (*b*) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(*a*) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (*a*) of clause (4);

(*b*) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(*c*) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (*a*) of clause (4).

23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

24. Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(*a*) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(*b*) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.— The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.— In sub-clause (*b*) to clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh,

Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(*a*) to establish and maintain institutions for religious and charitable purposes;

(*b*) to manage its own affairs in matters of religion;

(*c*) to own and acquire movable and immovable property; and

(*d*) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance to religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(IA) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a

minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

* * *

Savings of Certain Laws

31A. Saving of laws providing for acquisition of estates, etc.—(1) Notwithstanding anything contained in Article 13, no law providing for—

(*a*) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporation, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent :

Provided further that where any law makes any provisions for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article—

(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(*i*) any *jagir, inam* or *muafi* or other similar grant and in the States of Tamil Nadu and Kerla, any *janmam* right;

(*ii*) any land held under ryotwari settlement;

(*iii*) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(*b*) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, *raiyat, under-raiyat* or other intermediary and any rights or privileges in respect of land revenue.

31B. Validation of certain Acts and Regulations.—Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

31C. Saving of laws giving effect to certain directive principles.—Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy, shall be called in question in any court on the ground that it does not give effect to such policy :

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or

writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may be law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

33. Power of Parliament to modify the rights conferred by this Part in their application to Forces etc. (Text omitted- Author)

34. Restriction on rights conferred by this Part while martial law is in force in any area. (Text omitted- Author)

35. Legislation to give effect to the provisions of this Part.—Notwithstanding anything in this Constitution,—

(*a*) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(*i*) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and

(*ii*) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (*ii*);

(*b*) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (*i*) of clause (*a*) or providing for punishment for any act referred to in sub-clause (*ii*) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression "law in force" has the same meaning as in Article 372.

Part IV

DIRECTIVE PRINCIPLES OF STATE POLICY

36. Definition. — In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

37. Application of the principles contained in this Part.— The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

38. State to secure a social order for the promotion of welfare of the people. — (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and oportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(*a*) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(*d*) that there is equal pay for work for both men and women;

(*e*) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(*f*) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

39A. Equal justice and free legal aid. — The State shall secure that the

operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and maternity relief.

43. Living wage, etc.., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

43A. Participation of workers in management of industries.—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

44. Uniform civil code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

45. Provision for free and compulsory education for children.—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

46. Promotion of educational and economic interests of Scheduled Casts, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the im-

provement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. Organisation of agriculture and animal husbandry.—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. Separation of judiciary from executive.—The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. Promotion of international peace and security.—The State shall endeavour to—

(*a*) promote international peace and security;

(*b*) maintain just and honourable relations between nations;

(*c*) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

(*d*) encourage settlement of international disputes by arbitration.

Part VI

THE STATES

Council of Ministers

163. Council of Ministers to aid and advise Governor.— (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question, whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

164. Other provisions as to Ministers.— (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor :

Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

.....

Part IX

THE PANCHAYATS

243. Definitions.— In this Part unless the context otherwise requires :

.....

(b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the Village level;

.....

(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

(e) "Panchayat area" means the territorial area of a panchayat;

.....

(g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

.....

243A. Gram Sabha.— A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

243B. Constitution of Panchayats.— (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

.....

243G. Power, authority and responsibilities of Pancnayats.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to -

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

.....

243H. Powers in impose taxes by, and Funds of, the Panchayats,—

The Legislature of a State may, by law,—

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grant-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

.....

243M. Part not to apply to certain areas. —

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244.

(2) Nothing in this Part shall apply to —

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill Area in the State of Manipur for which District Council exist under any law for the time being in force.

(3) Nothing in this Part —

(a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

(4) Notwithstanding anything in this Constitution, —

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

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Part IXA

THE MUNICIPALITIES

243P. Definitions.— (1) In this Part, unless the context otherwise requires,—

(a) "Committee" means a Committee constituted under Article 243S;

(b) "district" means a district in a State;

(c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;

(e) "Municipality" means an institution of self-government constituted under Article 243Q;

(f) "Panchayat" means a Panchayat constituted under Article 243B;

(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities.— (1) There shall be constituted in every State-

(a) a Nagar Panchayat by whatever name called for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part :

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the

size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

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243W. Powers, authority and responsibilities of Municipalities, etc.— Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243ZC. Part not to apply to certain areas.— (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244.

(2) Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

243ZD. Committee for district planning.— (1) These shall be constituted in every State at the district level a District Planning Committee to consolidate

the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-—

(a) the composition of the District Planning Committee;

(b) the manner in which the seats in such Committees shall be filled: Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and form amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,-

(a) have regard to-

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

Part X

THE SCHEDULED AND TRIBAL AREAS

244. Administration of Scheduled Areas and Tribal Areas.—(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Minister or both therefor.—(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising whether wholly or in part all or any of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and create therefor—

(*a*) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or

(*b*) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) may, in particular,—

(*a*) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of Legislature of the State of Assam or otherwise;

(*b*) define the matters with respect to which the executive power of the autonomous State shall extend;

(*c*) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;

(*d*) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and

(*e*) make such supplemental, incidental and consequential provisions as may be deemed necessary.

(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (*a*) or sub-clause (*b*) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and voting.

(4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of Article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

Part XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

275. Grants from the Union to certain States.—(1) Such sums as Parliament may, by law, provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam, capital and recurring, equivalent to—

(*a*) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and

(*b*) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(I-A) On and from the formation of the autonomous State under Article 244A,—

(*i*) any sums payable under clause (*a*) of the second proviso to clause (1) shall, if the autonomous State comprises all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;

(*ii*) there shall be paid out of the Consolidated Fund of India as grant-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

280. Finance Commission.—(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of

every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may be law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to-

(*a*) the distribution between the Union and the State of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;

(c) he measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;

(d) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

Part XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

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338. National Commission for Scheduled Castes and Scheduled Tribes.—

(1) There shall be a Commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be duty of the Commission—

(*a*) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Commission or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(*b*) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(*c*) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(*d*) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(*e*) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(*f*) to discharge such other functions in relations to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (*a*) or inquiring into any complaint referred to in sub-clause (*b*) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely :—

(*a*) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(*b*) requiring the discovery and production of any document;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copy thereof from any court or office;

(*e*) issuing commissions for the examination of witnesses and documents;

(*f*) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

(10) In this article references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian community.

339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.—(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order, appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) the executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

342. Scheduled Tribes.— (1) The President may with respect to any State or Union territory, and were it ia a State, after consultation with the Governor therof, by public notification, specify the tribes of tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or excluded from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

FIFTH SCHEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

General

1. Interpretation — In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram.

2. Executive power of a State in Scheduled Areas — Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor to the President regarding the administration of Scheduled Areas — The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in the State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

Administration and Control of Scheduled Areas and Scheduled Tribes

4. Tribes Advisory Council — (1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State :

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be—

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. Law applicable to Scheduled Areas — (1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the Stare subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular, and without prejudice to the generality of the foregoing power, such regulations may —

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

Scheduled Areas

6. Scheduled Areas— (1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas.

(2) The President may at any time by order—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

Amendment of the Schedule

7. Amendment of the Schedule — (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram

1. Autonomous districts and autonomous regions— (1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and IIA and in Part III of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification,—

(a) include any area in any of the Parts of the said table,

(b) exclude any area from any of the Parts of the said table,

(c) create a new autonomous district,

(d) increase the area of any autonomous district,

(e) diminish the area of any autonomous district,

(f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

(ff) alter the name of any autonomous district,

(g) define the boundaries of any autonomous district :

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule :

Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said table) as appear to the Governor to be necessary for giving effect to the provisions of the order.

2. Constitution of District Councils and Regional Councils—(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of district)" and "the Regional Council of (name of region)", shall have perpetual succession and a common seal and shall by said name sue and be sued:

Provided that the District Council constituted for the North Cachar Hills District shall be called as the North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for —

(a) the composition of the District Councils and Regional Councils and the allocation of seats therein;

(b) the delimitation of territorial constituencies for the purpose of elections to those Councils;

(c) the qualifications for voting at such elections and the preparation of electoral rolls therefor;

(d) the qualifications for being elected at such elections as members of such Councils;

(e) the term of office of members of Regional Councils;

(f) any other matter relating to or connected with elections or nominations to such Councils;

(g) the procedure and the conduct of business including the power to act notwithstanding any vacancy in the District and Regional Councils;

(h) the appointment of officers and staff of the District and Regional Councils.

(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor :

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate :

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.

(7) The District or the Regional Council may after its first Constitution make rules with the approval of the Governor with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules with like approval regulating —

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be :

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to the officers and staff of, and the procedure and the conduct of business in, each such Council.

3. Powers of the District Councils and Regional Councils to make laws — (1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to —

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town :

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of *jhum* or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

(i) marriage and divorce;

(j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891 or under any other law for the time being in force in the area in question.

(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

3A. Additional powers of the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council to make laws — (1) Without prejudice to the provisions of paragraph 3, the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council within their respective district, shall have power to make laws with respect to —

(a)industries, subject to the provisions of Entries 7 and 52 of List of the Seventh Schedule;

(b) communication, that is to say, roads, bridges, ferries and other means of communication not specified in List I of the Seventh Schedule, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List I and List III of the Seventh Schedule with regard to such waterways, vehicles other than mechanically propelled vehicles;

(c) preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; cattle pounds;

(d) primary and secondary education;

(e) agriculture including agricultural education and research, protection against pests and prevention of plant diseases;

(f) fisheries;

(g) water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to

the provisions of entry 56 of List I of the Seventh Schedule;

(h) social security and social insurance; employment and unemployment'

(i) flood control schemes for protection of villages, paddy fields, markets, towns, etc. (not of technical nature);

(j) theatre and dramatic performances, cinemas subject to the provisions of entry 60 of List I of the Seventh Schedule; sports entertainments and amusements;

(k) public health and sanitation, hospitals and dispensaries;

(l) minor irrigation;

(m) trade and commerce in, and the production, supply and distribution of food stuffs, cattle fodder, raw cotton and raw jute;

(n) libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance; and

(o) alienation of land.

(2) All laws made by the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council under paragraph 3 or under this paragraph shall, in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom :

Provided that the President may direct the Governor to return the law to the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, together with a message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will, consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the date of receipt of such message and, if the law is again passed by the said Council with or without amendment it shall be presented again to the President for his consideration.

4. Administration of justice in autonomous districts and autonomous regions — (1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of

this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officer as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in the behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in the behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other then those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating —

(a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;

(b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;

(c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;

(d) the enforcement of decisions and orders of such Councils and courts;

(e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

(5) On and from such date as the President may, after consulting the Government of the State concerned, by notification appoint in this behalf, this paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if —

(i) in sub-paragraph (1), for the words "between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply", the words" not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph 5 of this Schedule, which the Governor may specify in this behalf," had been *substituted;*

(ii) sub-paragraphs (2) and (3) has been *ommitted;*

(iii) in sub-paragraph (4) —

(a) for the words "A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating", the words "The Governor may make rules regulating" had been *substituted;* and

(b) for Clause (a), the following clause had been *substituted,* namely :—

"(a) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie;"

(c) for clause (c), the following clause had been *substituted,* namely :—

"(c) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5);" and

(d) in clause (e), for the words, brackets and figures "sub-paragraphs (1) and (2)", the words, brackets and figure "sub-paragraph (1)" had been *substituted.*

5. Conferment of powers under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.— (1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the power so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub- paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

(4) On and from the date appointed by the President under sub-para-

graph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph.

6. Powers of the District Council to establish primary schools, etc. — (1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

(2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State extends.

7. District and Regional Funds — (1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

(3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

(4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.

8. Powers to assess and collect land revenue and to impose taxes —(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of the

State in assessing lands for the purpose of land revenue in the State generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say —

(a) taxes on professions, trades, callings and employments;

(b) taxes on animals, vehicles and boats;

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

9. Licences or leases for the purpose of prospecting for, or extraction of, minerals— (1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

In Application only the following paragraph is added to States of Tripura and Mizoram -

(3) The Governor may, be order, direct that the share of royalties to be made over to a District Council under this paragraph shall be made over to that Council within a period of one year from the date of any agreement under sub-paragraph (1) or, as the case may be, of any determination under sub-paragraph (2).

10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals.—(1) The District Council of an

autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

(b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;

(c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;

(d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total members of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

Application of the Sixth Schedule to States of Tripura and Mizoram:— In its application to States of Tripura and Mizoram paragraph 10 shall stand modified as under :

(a) in the heading, the words "by non-tribals" shall be omitted;

(b) in sub-paragraph (1), the words "other than Scheduled Tribes" shall be substituted, namely:—

"(d) prescribe that no person resident in the district shall carry on any trade, whether wholesale or retail, except under a licence issued in that behalf by the District Council."

11. Publication of laws, rules and regulations made under the Schedule.— All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official *Gazette* of the State and shall on such publication have the force of law.

12. Application of Acts of Parliament and the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam —(1) Notwithstanding anything in this Constitution—

(a) no Act of the Legislature of the State of Assam in respect of any of the matters specified in paragraph 3 or paragraph 3-A of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Assam prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, be public notification, direct that any Act of Parliament or of the Legislature of the State of Assam to which the provisions of clause (*a*) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region or any part thereof subject to such exceptions or modification as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya.—Notwithstanding anything in this Constitution,—

(a) If any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council, or an the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

(b) the President may, with respect of any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

12AA. Application of Acts of Parliament and of the Legislature of the State of Tripura to the autonomous district and autonomous regions in the State of Tripura — Notwithstanding anything in this Constitution —

(a) on Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the autonomous district or an autonomous region in the State unless, in either case, the District Council for that district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall, in its application to that district or such region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Tripura to which the provision of clause (a) of this sub-paragraph do not apply, shall not apply to the autonomous district or an autonomous region in that State, or shall apply to that district or such region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

12 B. Application of Acts of Parliament and of the Legislature of the State of Mizoram to autonomous districts and autonomous region in the State of Mizoram — Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of Mizoram in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Mizoram prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case, the District Council for such district or having jurisdiction over such region, by public notification,

so directs, and the District Council, in giving such direction with respect to any Act, may direct that the Act shall, in its application to such district or region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement — The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under Article 202.

14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions. — (1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on —

(a) the provision of educational and medical facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions; and

(c) the administration of the laws, rules and regulations made by the District and Regional Councils;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of the State.

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

15. Annulment or suspension of acts and resolutions of District and Regional Councils.— (1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India or likely to be prejudicial to public order, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made:

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

Application of the Sixth Schedule to States of Tripura and Mizoram.—

(a) in the opening paragraph, for the words "by the Legislature of the State", the words "by him" shall be substituted;

(b) the proviso shall be omitted.

16. Dissolution of a District or a Regional Council.—(1) The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council, and—

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by the State Legislature.

Application of the Sixth Schedule to States of Tripura and Mizoram.—

(a) in sub-paragraph (1), the words "subject to the previous approval of the Legislature of the State" occurring in clause (b), and the proviso shall be omitted;

(b) shall be substituted, namely:—

"(3) Every order made under sub-paragraph

17. Exclusion of areas from autonomous districts in forming constituencies in such districts.—For the purposes of elections to the Legislative Assembly of Assam or Meghalaya or Tripura, or Mizoram, the Governor may by order declare that any area within an autonomous district in the State of Assam or Meghalaya or Tripura or Mizoram, as the case may be, shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

.....

19. Transitional provisions.—(1) As soon as possible after the com-

mencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provision shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely:—

(a) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(b) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

(2) Any direction given by the Governor under clause (a) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

(3) All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

20. Tribal areas.—(1) The areas specified in parts I, II, , II A and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram.

(2) Any reference in Part I, Part II or Part III of the table below to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of Section 2 of the North-Eastern Areas (Reorganisation) Act, 1971 :

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) of sub-paragraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the Khasi Hills District.

(3) The reference in Part II A in the table below to the "Tripura Tribal Areas District" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.

TABLE

PART I

1. The North Cachar Hills District.
2. The Karbi Anglong District

PART II

1. Khasi Hills District.
2. Jaintia Hills District.
3. The Garo Hills District.

PART II-A

Tripura Tribal Areas District.

PART III

1. The Chakma District.
2. The Mara District.
3. The Lai District.

21. Amendment of the Schedule.— (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

ELEVENTH SCHEDULE

(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementations of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small-scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Road, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.

26. Social welfare, including welfare of the handicapped and mentally retarded.

27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

28. Public distribution system.

29. Maintenance of community assets.

TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.

2. Regulation of land use and construction of buildings.

3. Planning for economic and social development.

4. Roads and bridges.

5. Water supply for domestic, industrial and commercial purposes.

6. Public health, sanitation, conservancy and solid waste management.

7. Fire services.

8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle ponds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

The Provisions of the Panchayats

(Extension to the Scheduled Areas) Act, 1996

No. 40 of 1996 [24th December, 1996]

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Be it enacted by Parliament in the Forty-Seventh Year of the Republic of India as follows :

1. Short title - This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

2. Definition - In This Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in clause (1) to article 244 of the Constitution.

3. Extension of Part IX of the Constitution - The provisions of the Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.

4. Exceptions and Modifications to Part IX of the Constitution - Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely :-

(a) State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affair in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are including in the electoral rolls for the Panchayat at the village level;

(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their culture identity, community resources and the customary mode of dispute resolution :

(e) every Gram Sabha shall :-

(i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;

(ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

(f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause (e);

(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in the Panchayat for whom reservation is sought to be given under Part IX of the Constitution;

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats :

Provided further that all seats of chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes :

(h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level :

Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;

(i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;

k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;

(l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specially with -

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) **the power to exercise control over money lending to the Scheduled Tribes;**

(vi) **the power to exercise control over institutions and functionaries in all social sectors;**

(vii) **the power to control over local plans and resources for such plans including tribal sub-plans;**

(n) the State legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayats at the lower level or the Gram Sabha.

(o) the State Legislature shall endeavour to maintain the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas.

5. Continuance of existing laws and Panchayats - Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas immediately before the date on which this Act receives the assent of the President, which is inconsistent with the provisions of the Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President.

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council by each House of the Legislature of that State.

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About the Author:

Dr. B.D. Sharma is an authority on tribal affairs in the country. His concern for the tribal people began in Bastar, the largest tribal tract of the country where he was posted as Collector and District Magistrate. While serving in the Central Government and State Government, he was responsible for formulation of tribal polisies particularly what is known as sub-plan strategy. He was also instrumental in bringing back the Fifth Schedule on the national agenda.

Dr. Sharma who joined the IAS in 1956 resigned from the same in 1981 when differences arose on vital issues of policy. Nevertheless he became Vice Chancellor of North Eastern Hill University (1981-86), covering some of the most enchanting tribal regions comprising Nagaland, Mizoram and Meghalya. He occupied the highest Constitutional position concerning tirbal people, as the last Commissioner for Scheduled Castes and Scheduled Tribes during 1986-91 after which the National Commission was constituted. His reports to the President are a landmark, the 28th being described as 'next in historical significance only to the Constitution of India'.

Eversince 1991, Dr. Sharma is with the tribal people and participating as an activist in their struggles. The law concerning tribal self-governance, which acknowledges the cometence of the village community to manage all its affairs according to its customs and tradition, is the most-significant achievement of the movement. His writtings in Hindi and their translations have become proud possessions of every tribal household. He is basically a student of mathematics with doctorate in the same subject.